UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
6th meeting
held on
Friday, 27 September 1996
at 10 a.m.
New York

SUMMARY RECORD OF THE 6th MEETING

Chairman: Mr. ESCOVAR SALOM (Venezuela)

CONTENTS

AGENDA ITEM 150: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.6
14 November 1996
ENGLISH
ORIGINAL: FRENCH

96-81231 (E)

The meeting was called to order at 10.05 a.m.

AGENDA ITEM 150: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/51/33, A/51/317)

1. Mr. WANG Xuexian (China) said that the consideration on a priority basis for the fourth year running of the item on assistance to third States affected by the application of sanctions under Chapter VII of the Charter reflected the growing concern of Member States over the frequent use by the Security Council of sanctions regimes, which had affected a growing number of countries.

2. It had been the consistent position of the Chinese Government that sanctions should not be used as a major means of settling disputes, because they caused serious difficulties to the economies of third States, especially those of the developing countries. It was also imperative for States thus affected by the implementation of sanctions to be able to exercise their right to consult the Security Council, in accordance with Article 50 of the Charter.

3. The United Nations should therefore make the necessary arrangements and take expedient measures to assist the affected States in overcoming the problems they faced. To that end, it should give priority to the most direct and prompt methods. Where that was not possible, long-term assistance and cooperation should be provided (cooperative projects, including credit plans) which could also enhance the ability of affected States to deal with the adverse consequences of sanctions. In that regard, the working paper submitted by the Russian Federation on the subject, which reflected quite comprehensively the various problems that had arisen in the course of the implementation of sanctions, as well as a variety of factors that should be taken into account in resolving them, was an important reference document which would facilitate the Committee's consideration of the item.

4. China also considered constructive the proposal put forward by Sierra Leone for the establishment of a dispute settlement service offering or responding with its services early in disputes. Although the Charter of the United Nations provided that parties should settle their disputes by peaceful means, the Organization lacked the corresponding mechanisms to facilitate such settlement. Nevertheless, advanced warning and settlement services were likely to reduce the frequency of recourse to measures such as the imposition of sanctions. In the light of the further explanations given by Sierra Leone, as well as the observations and recommendations offered by Member States, China was of the opinion that the proposal in question merited further study by the Special Committee.

5. The Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council were two publications that were indispensable to States and to the Organization, in that they facilitated the examination of the Organization's work and policies, thereby enhancing the effectiveness of its work, even though the completion of their preparation posed numerous difficulties in terms of human and financial resources. His delegation hoped that the Secretariat would make all appropriate arrangements so that the

compilation of those two documents could be completed and their quality guaranteed.

6. At its 1996 session, the Special Committee was for the first time open to all Member States, which, through their direct participation in its work, would help to instill new energy into the Committee, thereby permitting it to consider the new proposals that would continue to be advanced on the revision of the Charter and the reform of the United Nations. China was convinced that as long as delegations continued to actively participate in the debates of the Special Committee on the basis of cooperation and consensus, its work would surely be crowned with success.

7. Ms. HAKIM (Indonesia) said that the commemoration of the fiftieth anniversary of the United Nations had given rise to great optimism and hope in Member States and had offered them an opportunity to rededicate themselves to the principles and objectives of the Charter of the United Nations. However, even though the fundamental changes that had taken place on the international scene revived hopes for a new era of peace, justice and prosperity, the international community must overcome a series of unprecedented challenges and many uncertainties and contradictions.

8. In that context, it was important to revitalize and democratize the United Nations system. The strengthening of the role of the Organization should begin by the strengthening of the role of the General Assembly, which, as a universal forum for all Member States, should be the highest authority responsible for the maintenance of international peace and security as well as cooperation for development. It was the General Assembly that should provide guidance to the Security Council and play a central role in the reform process. In that regard, the Indonesian delegation welcomed the progress achieved so far in the revitalization of the Assembly, including the reorganization of the Main Committees.

9. With regard to the Security Council, it was even more urgent to enlarge its membership as a large number of States had become Members of the Organization since the previous review of the Council three decades previously. Such enlargement should accommodate the interests and needs of the developing countries, which comprised the overwhelming majority of Member States, and take into consideration certain other criteria, such as a State's capability and record of contributing to the maintenance of international peace and security. It was not sufficient, however, to increase the number of members of the Council. The latter should also adhere to the principles of transparency, legitimacy, accountability and efficiency in the discharge of its mandate. In that connection, she hoped that the efforts of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council would lead to concrete reform.

10. In the position paper issued on the fiftieth anniversary of the United Nations (A/50/60-S/1995/1), the Secretary-General had referred to the ramifications of the imposition of sanctions for the target countries and for third States. More often than not, the costs were being borne by the civilian population, and the objectives of the sanctions were not being accomplished. Against that backdrop, at its 1996 session, the Special Committee had accorded

primordial importance to the question of assistance to third States affected by the application of sanctions. In that regard, in order to implement the provisions of General Assembly resolution 50/51, which had, inter alia, underlined the importance of consultations under Article 50 of the Charter, the Security Council should try to enhance the effectiveness of its working methods. Her delegation appreciated the measures taken by the sanctions committees to increase the effectiveness and transparency of their work, in particular by facilitating access to them by States experiencing special economic problems because of the imposition of sanctions.

11. The General Assembly, the Economic and Social Council and the Committee for Programme and Coordination, for their part, were also of the utmost importance in mobilizing international support for affected third States. Other United Nations bodies, international financial institutions and international and regional organizations should contribute their efforts by holding meetings on the matter.

12. Her delegation also welcomed the arrangements which had been decided on by the Secretariat in connection with paragraph 3 of General Assembly resolution 50/51 to support the work of the Security Council. It approved the guidelines proposed by the Secretary-General in his report entitled "Implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions" (A/51/317), in particular the proposal to develop a methodology for assessing the consequences of sanctions. It also felt that the working paper presented by the Russian Federation merited further consideration.

13. With regard to the role played by the Organization in the maintenance of international peace and security, her delegation welcomed the working papers presented by the Libyan Arab Jamahiriya, Cuba and Sierra Leone.

14. As to the future work of the Special Committee, her delegation had noted with interest the working paper of the Russian Federation entitled "Draft declaration on the basic principles and criteria for the work of the United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts".

15. Mr. RODRIGUEZ CEDEÑO (Venezuela) said that while sanctions were important, they should not be regarded as the only instrument, less still as a primary instrument for the purposes of the maintenance of international peace and security. Instead, in the face of grave violations of international law which could lead to a breach of international peace and security, other means of settlement should be sought before resorting to sanctions.

16. With regard to the application of sanctions as such, his delegation also felt that, while General Assembly resolution 50/51 provided important guidelines which should underpin the consideration of the issue, the matter needed to be studied in greater depth. In that context, it was important to reflect on the effects sanctions might have for third States and the measures needed to alleviate them, and there was no need to invoke any obligation to justify such consideration. The situation was quite different from that which arose in the context of State responsibility and the corresponding obligation to make reparation. It would be preferable to try to establish effective follow-up

machinery and adopt effective and timely measures to prevent repercussions on third States of sanctions adopted by the Security Council.

17. While the Charter of the United Nations placed an obligation on the Security Council, the organ which adopted sanctions, to seek a practical, rapid and effective solution in such cases, other bodies of the Organization and international organizations, in particular those concerned with finance and aid, could also provide assistance to a mechanism designed to prevent or lessen the effects of sanctions. It was vitally important that the Security Council should first consider the effects that sanctions might have for third States in order to be able to decide on the most appropriate preventive measures and monitor their impact on those States.

18. In that respect, the working paper which the Russian Federation had submitted on the question contained very interesting aspects, although the concept of the "humanitarian limits" of sanctions seemed to be beyond the scope of the question and of the Special Committee's mandate.

19. The working papers presented by the Libyan Arab Jamahiriya and Cuba regarding the strengthening of the role of the United Nations in the maintenance of international peace and security deserved close study.

20. The proposal by the Sierra Leonean delegation to establish a dispute settlement service offering or responding with its services early in disputes could be very useful in the prevention and settlement of international disputes. However no mechanism or means of that type, whether legal or political, could operate without the consent of States. Moreover, the administrative and budgetary implications would have to be carefully considered in order to draw up a realistic and, hence, viable, proposal.

21. His delegation stressed the importance of updating and regularly publishing the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, since those publications undoubtedly facilitated the study of the Organization and its functions, promoted the increased participation of States in its work and showed the evolution of the internal system of justice in the Organization. To that end, the idea of outsourcing was of interest.

22. With regard to the future work of the Special Committee, the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts submitted by the Russian Federation should be carefully studied in order to draw up a complete, precise and innovative text in an area which was so important for the establishment and maintenance of international peace and security.

23. The Special Committee was an essential body which had an important role to play in the context of the ongoing reform of the Organization and was best placed to consider the legal questions raised by that reform in the context of strengthening the United Nations system.

24. Mrs. FLORES (Mexico) said that the Special Committee which, by the many instruments it had drawn up over the years, had helped fill great gaps in international law and the conduct of relations among States, could contribute effectively to the reform and modernization of the United Nations. In that respect, her delegation agreed with the representative of Portugal that the possibility should be considered of establishing mechanisms and means of communication which would enable the Committee to cooperate with the various working groups which were working to reform the Organization and make its experience and legal skills available to them.

25. With regard to sanctions imposed under Chapter VII of the Charter of the United Nations, her delegation stressed the importance it attached to ensuring transparency in their elaboration and making objective evaluations of them at regular intervals, determining their specific objectives and taking into account their possible repercussions on third States at the time of their adoption.

26. While acknowledging that the Organization faced financial difficulties, her delegation urged the Secretariat to make every effort to update the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council and to publish the overdue editions of those publications, which were a valuable means of preserving the institutional memory of the Organization.

27. The Trusteeship Council had duly accomplished the mission assigned to it in the Charter, and there was no reason for its continued existence. Therefore, her delegation still shared the Secretary-General's view that that body should be abolished. Moreover, since the Special Committee had already considered the issue, all proposals concerning the Trusteeship Council should be referred to it.

28. In the process of reforming and modernizing the United Nations, the International Court of Justice, which marked its fiftieth anniversary in 1996, should not be overlooked. Her delegation felt that that anniversary provided an opportunity to consider ways of giving the Court new impetus as the Organization's principal judicial organ and of adapting it to new international realities. In that connection, the Special Committee, which consisted of jurists, was in the best position to reflect on that issue and on the revitalization of the other subsidiary bodies of the United Nations that dealt with legal issues.

29. Lastly, in view of the Organization's financial crisis, the Special Committee should try to rationalize its methods of work and to take full advantage of available resources. To that end, it should carefully review its programme of work, delete the items which held little interest or which were already dealt with in other forums and focus on the consideration of issues which were likely to make a real contribution to the strengthening of the United Nations.

30. Mr. CHIMIMBA (Malawi) recalled that the framers of the Charter of the United Nations had intended that third States confronted with special economic problems as a result of preventive or enforcement measures against another State should be assisted by the Security Council, regardless of whether they were

Members of the United Nations. In its day, the Collective Measures Committee had clearly indicated the problems that could result from the effective application of economic measures if some countries either withheld their cooperation or failed to apply the measures effectively. Its work should be the point of departure for any discussion on the topic.

31. With respect to General Assembly resolution 50/51, it would be desirable, as recommended by the Collective Measures Committee, for the specialized agencies and other international organizations to participate in its implementation.

32. It was true that, until the 1970s, the Security Council had never had the opportunity to deal with a situation like the one envisaged by Article 50 of the Charter. Its appeal to Member States, in 1973, for technical, financial and material assistance to Zambia had not met with an adequate response. The Special Committee should help to elaborate mechanisms to avoid the recurrence of such situations, thereby strengthening the sanctions regime.

33. In that connection, Malawi had already supported the establishment of a trust fund. The Security Council and the specialized agencies or the Bretton Woods institutions could make arrangements to assist the affected countries, taking into account the fact that no two cases were exactly alike. The Special Committee should give further consideration to that proposal, and should also consider the possibility of treating compliance by a Member State with a sanctions regime as a contribution to peacekeeping, so that any special economic problems encountered in terms of Article 50 would be treated as expenses chargeable to the Organization; in the past, the International Court of Justice and the Legal Counsel had given opinions that tended to uphold the legality of that proposal.

34. Lastly, since the subgroup on the question of United Nations-imposed sanctions seemed to have left the question of the implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions to the Special Committee, Malawi urged the latter to consider the issue as a matter of priority.

35. Mrs. BAYKAL (Turkey) said that the provisions of the Charter of the United Nations, as they stood, were insufficient to address the needs of third States affected by the application of sanctions under Chapter VII. In fact, only a few of those provisions dealt with the issue. Therefore, Member States must agree on new measures and on ways and means to implement the existing provisions.

36. The resolution adopted by the General Assembly, at its fiftieth session, on the implementation of Charter provisions related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter was a step forward in that regard, as was the report prepared by the Secretary-General (A/51/317) in accordance with paragraph 4 of that resolution. The guidelines proposed in that report on technical procedures to be used by the Secretariat, especially those concerning impact assessment, could be very helpful not only in assessing or identifying the actual damage suffered by third States, but also in identifying practical ways of assisting the affected States. However, the fact

that impact assessment processes were initiated by the Security Council limited the participation of the third States most likely to be affected by sanctions.

37. The Sixth Committee should not lose sight of one of the main purposes of its discussions: namely, to facilitate the involvement of third States in the decision-making process concerning both sanctions and measures of assistance to such States. In her delegation's view, the solution to the problems of third States had two aspects. The first was the urgent need to address the economic problems resulting from sanctions, such as those faced by Turkey since the implementation of sanctions against Iraq. The second was the legal restructuring of the sanctions regime and the improvement of the working methods and procedures of the Security Council and of its sanctions committees, which were closely related to the effects of sanctions on third States. In that regard, the working paper submitted by the Russian Federation, entitled "Some observations regarding the implementation of the provisions of the Charter of the United Nations, including Article 50 on assistance to third States adversely affected by the application of the sanctions under Chapter VII of the Charter", contained some useful elements and should be discussed in depth.

38. Concerning the identification of new subjects for consideration in the future work of the Special Committee, the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts, submitted by the Russian Federation, contained ideas which represented a step in the right direction, but which should be made more clear and concise.

39. With regard to the proposals concerning the Trusteeship Council which the Special Committee had considered at its 1996 session, abolishing the Council would require an amendment to the Charter, which would have political and legal ramifications, quite apart from the fact that amending the charter was a very complex exercise.

40. Lastly, the Special Committee remained an important United Nations body that should continue to meet annually to consider topics such as the application of sanctions and the creation of mechanisms to assist third States affected by them. Such topics were becoming increasingly important as a result of the new needs of the international community and new proposals from both Member States and the Secretary-General.

41. Mr. ŠMEJKAL (Czech Republic) said that, with regard to assistance to third States affected by the application of sanctions imposed under Chapter VII of the Charter and the status of the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, his delegation supported the European Union position.

42. Many of the ideas contained in the proposal by Sierra Leone, entitled "Establishment of a dispute settlement service offering or responding with its services early in disputes", deserved further discussion and reflection. His delegation awaited with interest the revised version to be prepared by Sierra Leone, with the assistance of Guatemala in particular.

43. A decision concerning the future of the Trusteeship Council was not urgent; putting it on the "back burner", so to speak, would have no negative impact within the United Nations, at the financial, administrative or any other level. Moreover, it would be neither realistic nor appropriate to establish a new organ to protect the common heritage of mankind, since its functions would duplicate those of existing bodies within or outside the United Nations system.

44. Lastly, with regard to the Special Committee's future work, the working paper submitted by the Russian Federation deserved further consideration, in which his delegation was willing to participate. Opening the Special Committee to all Member States had been counter-productive, since there had been a tendency during the debate to call into question the very existence of the Committee, rather than to focusing on its revitalization. It would be paradoxical to abolish the Special Committee at a time when a vast reform of the United Nations was on the agenda. He shared the view of those delegations which favoured mandating the Special Committee to provide technical support to the working groups on United Nations reform by examining certain legal aspects of the measures envisaged by the various bodies involved, in order to strengthen coordination. However, care must be taken not to submit to it all the measures discussed in the working groups, because such a step would be superfluous in the case of proposals having no specifically legal aspects.

45. Mr. PATRIOTA (Brazil) said he agreed with other delegations, including the delegation of Portugal, that the Special Committee could play a relevant role in the process of reform currently being addressed by several working groups of the General Assembly in order to help the United Nations to adapt to current realities and prepare for the future. In that context, the possible implications for the Charter should be kept in mind.

46. As coordinator for the Subgroup on United Nations Sanctions of the Working Group of the General Assembly on An Agenda for Peace, Brazil had presided over a fruitful exchange of views that had resulted in the adoption of a provisional text (document WGAP/96/2). Although the document's main focus was the impact of sanctions on target countries (particularly their unintended side effects), procedural improvements related to the mechanics of imposing and lifting sanctions and the administration of sanctions regimes, the discussions in the Subgroup had also touched on questions related to the implementation of Article 50.

47. The report of the Secretary-General on implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (A/51/317) made an important contribution to the consideration of questions relating to Article 50 in the Sixth Committee and the Special Committee. The report focused on specific problems including the role of the Secretariat, the methodology for a uniform and internationally recognized assessment of consequences incurred by third States, and the coordination of information about international economic or other assistance potentially available to third States. For example, the proposals listed in paragraph 15 included a positive response to several of the ideas frequently raised in various United Nations forums.

48. Brazil, which had consistently encouraged improvements in the interaction between the Security Council and other Member States, supported such measures as allowing affected States to be invited to meetings of the Security Council and its subsidiary bodies with a view to rendering Article 50 more fully operative.

49. The report also raised the important question of the development of an internationally recognized system of assessing damages, which would place the question of alleviating losses incurred by third States on a less abstract level. However, the distinctions between the direct and indirect effects of sanctions on third States and between "recurrent" and "total" losses and costs, while relevant, were necessarily related to such other key variables as the identification of an appropriate time horizon for a given assessment. While it might be difficult to reach an understanding on some of those variables, the complexity of the endeavour should not be invoked as an excuse for failing to address on an urgent basis serious problems which had a tangible impact on Member States.

50. There was an urgent need to reduce to a minimum the losses of third countries, particularly those most affected by sanctions. Ongoing and careful monitoring of the effects of sanctions on third countries had become necessary, in a framework of strict adherence to the relevant Security Council resolutions.

51. Concerning the Special Committee's future work, his delegation was interested in the proposal by the Russian Federation on basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts. Recent experience had indicated that an absence of clear principles and criteria had not helped the Organization to foster peace and security in the post-cold-war period. There was a growing perception that it must adopt a more systematic approach to deal with a new generation of conflicts. Although recognizing the limitations of the Special Committee in taking up such an ambitious project, his delegation saw merit in pursuing the Russian proposal, even if only as a possible corollary to discussions in other forums.

52. The Special Committee should pursue the discussion of the various proposals submitted to it regarding its future work at its next session, so that Member States could reach a consensus on a more sharply focused role for that important organ as part of broader efforts to revitalize the United Nations.

The meeting rose at 11.25 a.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
7th meeting
held on
Monday, 30 September 1996
at 10 a.m.
New York

SUMMARY RECORD OF THE 7th MEETING

Chairman: Mr. Escovar SALOM (Venezuela)

CONTENTS

AGENDA ITEM 150: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

AGENDA ITEM 120: HUMAN RESOURCES MANAGEMENT

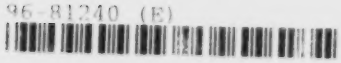
This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2 794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.7
1 November 1996

ORIGINAL: ENGLISH

96-81240 (E)



The meeting was called to order at 10.10 a.m.

AGENDA ITEM 150: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/51/33 and A/51/317)

1. Mr. ROSENSTOCK (United States of America), referring to the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter (A/51/33, chap. III), welcomed the fact that, pursuant to General Assembly resolution 50/51, further measures had been taken to enhance the transparency of the Security Council sanctions committees, which had given third States seeking assistance greater access to those committees. His delegation welcomed the report of the Secretary-General on the question (A/51/317), which detailed the steps taken and planned by the Secretariat in response to paragraphs 3 and 4 of that resolution, including the development of better assessment methodology and the provision of more accurate and timely information and assessments.

2. He noted the efforts made in implementation of paragraph 6 of General Assembly resolution 50/52, which invited participation by the United Nations specialized agencies and intergovernmental organizations in the work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. As a result of actions taken by the Security Council, its Committee established pursuant to resolution 724 (1991) concerning Yugoslavia, and the Secretary-General, funds for infrastructure projects in the States bordering on Serbia and Montenegro had been provided by Member States and regional organizations. His Government's contribution to that fund so far totalled some $5 million.

3. Similarly, in the case of Iraq, consultations under Article 50 of the Charter had resulted in a statement issued by the President of the Security Council, calling on States and international financial institutions to take the special economic problems of third States into account in developing their technical, financial and material assistance programmes. Several countries, including the United States of America, had made contributions to the Gulf Crisis Financial Coordination Group established in September 1990 by major donors and creditors for the purpose of channelling assistance to the most seriously affected countries. Substantial amounts had been disbursed to those States through balance-of-payment grants, debt relief and concessional loans.

4. The Secretary-General's report had, in conjunction with actions taken by the Security Council and the sanctions committees, focused the Organization's attention on the issue and dealt realistically with the underlying concerns. The United States delegation therefore believed that no further procedural arrangements were necessary and that the question should thereafter be addressed through the normal channels. Moreover, the need for strict enforcement of sanctions regimes and of Security Council prerogatives must be kept firmly in mind in any further discussion of the effects of sanctions on third States.

5. With regard to the question of the status of the Repertory of Practice of United Nations Organs and of the Repertoire of the Practice of the Security Council (A/51/33, chap. VI), his delegation concurred fully with many delegations regarding the importance attached to those publications and looked forward to the Secretary-General's report on the question.

6. Turning to the proposal by Sierra Leone for the establishment of a dispute settlement service offering or responding with its services early in disputes (A/51/33, chap. IV), he reaffirmed his delegation's support for measures designed to give effect to the dispute settlement provisions contained in Article 33 of the Charter. The possibility of establishing a list of mediators merited further consideration, provided that there was sufficient commitment to the idea to ensure that such a list would actually be used.

7. With regard to the proposals concerning the Trusteeship Council (A/51/33, chap. V), the report of the Secretary-General (A/50/1011) showed that a majority of Member States supported the abolition of the Council. In the spirit of reform that currently pervaded the Organization, it was appropriate and timely to undertake a review of the Charter provisions dealing with the Trusteeship Council with a view to their deletion. As in the case of the "enemy State" clauses, elimination of those provisions could and should be a straightforward legal exercise. There thus appeared to be no impediment to proceeding along the lines proposed by the Secretary-General.

8. Similar considerations applied to the future work of the Special Committee (A/51/33, chap. VII). The centre of action on many issues, particularly those relating to reform of the United Nations, had shifted to other forums within the Organization. The Romanian delegation and others had suggested that the Special Committee could play a role in providing technical legal input on those issues. He questioned, however, whether that was sufficient justification for the Special Committee to hold inter-sessional meetings outside the framework of the Sixth Committee. His delegation endorsed the Bulgarian suggestion that the Special Committee should be available to deal with select issues and that inter-sessional meetings should be convened if and when the General Assembly considered that a sufficient number of questions had been referred to it in a particular year. It might also be possible for some of those issues to be considered in the Sixth Committee. Other alternatives included holding biennial sessions of the Special Committee or scheduling brief meetings of several days' duration so that the Special Committee could survey any issues referred to it by other forums and make recommendations to the Sixth Committee.

9. Mr. ELARABY (Egypt) said that the significant accomplishments of the Special Committee in recent years relating to the maintenance of international peace and security and the peaceful settlement of disputes affirmed the need to ensure that its work continued. With regard to implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, no appropriate solutions had yet been found to deal with the effects of economic sanctions against third States. However, the positive measures set out in General Assembly resolution 50/51, particularly paragraphs 1 and 3, represented a first step. The Secretary-General's latest report on the subject (A/51/317) described the arrangements made in the Secretariat to implement paragraph 3 of

that resolution and listed possible guidelines on technical procedures to be used by the Secretariat in that connection.

10. In the light of the Secretary-General's previous report on the topic (A/50/361), he believed that additional measures could be taken to minimize the effect of such sanctions on third States, such as implementing Article 31 of the Charter with a view to affording an opportunity to States having strong economic ties to States against which sanctions had been imposed to apprise the Security Council of the potential impact of such sanctions. International and regional financial institutions could also be called upon to adopt special programmes aimed at addressing the damage suffered by third States as a result of sanctions.

11. The Special Committee should continue to devote attention to the issue and should meet for two weeks to complete its work, unless new issues made it necessary to revert to a three-week session.

12. The working paper submitted by the Russian Federation on the question of sanctions (A/51/33, para. 42) contained significant ideas and should receive thorough consideration from the Special Committee at its next session. The paper also addressed the impact of sanctions on the people of the affected State and means of ensuring the minimum needs for survival, as well as measures to prevent deterioration of the humanitarian situation in such cases. The importance of that issue had recently been felt in connection with the implementation of Security Council resolution 986 (1996) aimed at alleviating the suffering of the Iraqi people after more than six years of sanctions.

13. Noting that the work of the Special Committee sometimes overlapped with that of working groups of the General Assembly concerned with United Nations reform, he endorsed paragraph 144 of the Special Committee's report (A/51/33). He also believed that the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security contained new ideas which merited consideration at the Special Committee's next session. In addition, his delegation was willing to discuss the proposal by Sierra Leone concerning the establishment of a dispute settlement service offering or responding with its services early in disputes in the light of the agreement reached at the last session that the delegation of Sierra Leone, in cooperation with other interested delegations, and in particular that of Guatemala, should prepare a revised version of the proposal that would take account of the comments made in the Special Committee.

14. Ms. WONG (New Zealand) noted that the Special Committee's most recent session was the first one at which it had been open to all Member States. Her delegation welcomed that step as a move towards fundamental democratization of the Organization. The notion that an enlarged membership would spell doom for the Special Committee was belied by the reality of its meagre accomplishments thus far. Until the Special Committee adopted a meaningful agenda, there was unlikely to be significant interest in its work.

15. Unfortunately, with the exception of the United States of America in the case of the Trusteeship Council's future, the permanent members of the Security

Council were reluctant to embark on any reform or review of the Charter. Unless the necessary intellectual effort was made to revitalize the work of the Special Committee, the Committee should be disbanded. That was especially true given that more constructive work was now being done in ad hoc working groups. Several delegations had made interesting proposals concerning future directions for the Special Committee's work; nevertheless, her delegation did not foresee a significant role for the Special Committee in the reform of the United Nations. It was instructive that no delegation had suggested that the Special Committee should consider the latest proposal for amending the Charter which had arisen in the working group on reform of the Security Council. The delegation sponsoring that proposal was undoubtedly aware that other issues referred to the Special Committee, such as the question of assistance to third States affected by the implementation of sanctions, had been effectively shelved.

16. As to the status of the Repertory and the Repertoire, her delegation understood that no resources were available for the issuance of the two publications. The fact that the most recent volumes of the Repertory and of the Repertoire dated from 1979 and 1988, respectively, prompted her delegation to question whether the two publications were of any value whatsoever. For nearly two decades, the New Zealand mission to the United Nations had, despite limited resources, produced the United Nations Handbook. If the Repertory and the Repertoire were to be continued, her delegation supported their being produced with external support.

17. The time had come to take a hard look at the Organization's less fruitful and more ritualistic endeavours. There might be virtue in maintaining the Special Committee as a standing body which offered opportunities for serious negotiation when it was required and when a consensus existed on making progress.

18. Ms. SINJELA (Zambia), referring to chapter III of the Special Committee's report (A/51/33), said that although other United Nations organs were also dealing with the question of assistance to third States affected by the application of sanctions, her delegation supported its continued consideration by the Special Committee. There was no basis for considering the imposition of sanctions separately from the humanitarian concerns which they generated. The reason why there had been a call for consultations with third States likely to be adversely affected by the application of sanctions was that sanctions had a major impact on the economies and the population of third States. Unless that reality was taken into account, there was a risk that legal solutions would be proposed which could not be implemented in practice.

19. Her delegation supported the right of third States to compensation and the establishment of a trust fund to finance such compensation. The Security Council would determine which States were and were not entitled to compensation in the light of specific circumstances.

20. Her delegation also supported the proposal to establish a mechanism for consultations between third States and the donor community in order to assess and seek solutions to the problems of affected States. Such consultations should, however, complement the efforts of the Security Council and take place on a bilateral basis between the affected State and the donor community. The

same applied to the international financial institutions; in that context, her delegation welcomed and supported the proposal contained in paragraph 3 (d of General Assembly resolution 50/51. While the notion of alternative, non-financial measures of assistance was worth considering, her delegation did not believe that its implementation would be feasible.

21. Sanctions were a useful tool for responding to threats to peace and acts of aggression, but they should not be used as the primary means of settling international disputes. The Security Council should, as far as possible, have recourse to the dispute settlement mechanisms already in place. Furthermore, sanctions should not be imposed without consulting the parties involved, including third States likely to be affected. Her delegation supported the suggestion that resolutions imposing sanctions should provide for periodic reviews of their implementation, which would make it possible to assess the effectiveness of sanctions and the need for adjustments.

22. Turning to chapter IV of the Special Committee's report, she said that her delegation, while welcoming the proposal of Sierra Leone for the establishment of a dispute settlement service, saw no need for a permanent mechanism. Nevertheless, her delegation looked forward to further discussion of the question at the Special Committee's next session.

23. With regard to chapter VI of the report, her delegation, while fully cognizant of the difficulties faced by the Secretariat in its efforts to publish and update the Repertory and the Repertoire, regretted that they had been discontinued. It was to be hoped that ways of resuming their publication could be found.

24. With regard to the identification of new subjects for consideration in the future work of the Special Committee (A/51/33, chap. VII), her delegation supported the suggestion that the Special Committee could contribute to the ongoing discussion on the reform of the United Nations, in particular, by providing legal advice on questions concerning amendments to the Charter or the rules of procedure of various United Nations bodies.

25. Mr. POLITI (Italy) said that his delegation fully concurred with the views expressed by the representative of Ireland on behalf of the European Union concerning the implementation of Charter provisions related to assistance to third States affected by the application of sanctions and the status of the Repertory and of the Repertoire. His delegation wished to reaffirm the special importance it attached to finding adequate and equitable solutions to the problems of third States affected by the application of sanctions.

26. With regard to the peaceful settlement of disputes between States, the proposal submitted by Sierra Leone had given rise to a useful discussion. The proposed dispute settlement service was intended to be a permanent mechanism based on the flexible use of one or more of the options provided for in Article 33 of the Charter. That solution considerably reduced the risk of duplicating procedures already envisaged by specific international instruments, while providing an institutional facility for dispute prevention and settlement where other procedures were not already available to the parties concerned. His delegation looked forward to the preparation by Sierra Leone and Guatemala of a

revised version of the proposal that would take account of the comments made in the Special Committee.

27. With regard to the proposals concerning the Trusteeship Council, his delegation reaffirmed its support for the Maltese proposal designed to strengthen the mandate of the Council as the repository of the common heritage of mankind. The question required further examination, either in the Special Committee or in the General Assembly's Open-ended High-level Working Group on the Strengthening of the United Nations System.

28. The issue of the future work of the Special Committee had been discussed extensively in the light of the Special Committee's allegedly modest accomplishments and the need to revitalize its functions and role within the institutional framework of the United Nations. While his delegation shared those concerns, it believed that in recent years the Special Committee had achieved important results, in particular, in the areas of the peaceful settlement of disputes and the enhancement of cooperation between the United Nations and regional organizations. He welcomed the decision to open the Special Committee to participation by all Member States.

29. The Special Committee could continue to make a significant contribution to the strengthening of the United Nations. The draft declaration on peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts submitted by the Russian Federation could be the subject of fruitful reflection. The duration of the Special Committee's session should be determined each year in the light of the amount of work assigned to it, so as to make the best use of available resources. The suggestion that the Special Committee should be entrusted with the task of assisting the General Assembly's working groups in dealing with legal issues pertaining to reform of the United Nations required further study.

30. Mr. BOHAYEVSKY (Ukraine) said that his country had sustained direct losses estimated at $4.5 billion as a result of its strict and consistent implementation of sanctions in compliance with Security Council resolutions. Since sanctions were imposed on behalf of all Member States, it was unfair that only a handful of States - primarily the neighbours or major trading partners of the target countries - should suffer the prolonged effects of their implementation.

31. Ukraine attached great importance to the establishment of a mechanism for consultation between the Security Council and the countries which were or might be affected by the implementation of sanctions. The role of international financial and trade institutions and United Nations development agencies should be explored further, as should proposals which did not require additional financing. His delegation supported the establishment of a standing Security Council sanctions committee to research the effects of sanctions regimes, monitor their observance, estimate losses to third States by means of a unified methodology developed in line with the recommendations contained in the Secretary-General's report (A/51/317), and find ways to minimize such losses.

32. He regretted that the Secretary-General's report did not adequately address the need to explore innovative and practical measures of assistance to affected

third States, as requested in General Assembly resolution 50/51. That resolution should be implemented promptly, and the proposals put forward at previous sessions of the Special Committee regarding the implementation of the provisions of the Charter should be studied in depth by both the Sixth Committee and the Special Committee. He supported the proposal to establish a working group of the Sixth Committee to address the issue, as part of the organizational framework recommended in paragraph 55 of the Special Committee's report (A/51/33).

33. The Special Committee was the most appropriate forum for addressing the legal aspects of the revitalization and reform of the United Nations. He supported the inclusion in its agenda of the consideration of proposals to enhance the role of the International Court of Justice. Lastly, his delegation felt that the Special Committee should hold its session later in the year to lengthen the interval between the Sixth Committee's session and that of the Special Committee, so that delegations could be better prepared to deal with the issues on the latter's agenda.

34. Mr. ENAYAT (Islamic Republic of Iran) said that as the Special Committee had prepared a number of important instruments relating to the maintenance of international peace and security and the peaceful settlement of disputes, it should be actively involved in the current discussions on those questions. The report of the Secretary-General on assistance to third States affected by the application of sanctions (A/51/317) analysed that issue in the light of economic globalization and the varying nature of sanctions regimes, and reaffirmed the role of the Administrative Committee on Coordination with respect to information on international economic and other assistance available to third States.

35. The proposed abolition of the Trusteeship Council would require an amendment to the Charter, which would involve a lengthy procedure. Malta's proposal to entrust the Council with the task of safeguarding the "global commons" would completely change the Council's structure and mandate. However, it could not be convincingly argued that existing United Nations machinery for environmental protection was adequate.

36. Ms. VARGAS de LOSADA (Colombia) said that her country attached great importance to the work of the Special Committee, since that body had been established at Colombia's initiative. However, it could only be effective if it was not excluded from participation in the process of reforming the United Nations.

37. Although General Assembly resolution 50/51 provided for the establishment of procedures for managing the effects of sanctions on third States, it did not solve the problem itself. In the current context of economic globalization and interdependence, it was more important than ever to exhaust all political and diplomatic means of resolving serious situations before resorting to the imposition of sanctions. In that regard, the Russian Federation's proposal (A/51/33, para. 42) deserved careful consideration.

38. With respect to the proposals concerning the Trusteeship Council, her Government felt that the Council's achievements were a source of pride for the Organization. However, the Council's success in attaining its objectives meant

that it was no longer needed and should be abolished, especially since the Organization was undergoing a process of reform and rationalization. Nonetheless, in view of the difficulty of amending the Charter, the decision to abolish the Council should be taken together with other decisions to amend the Charter.

39. Lastly, she noted the importance of the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, and expressed the hope that efforts would be made to update them.

40. Mr. GRAY (Australia) said that his delegation, along with the Nordic countries and other delegations, had studied the issue of sanctions as a tool for the peaceful settlement of disputes. He agreed that steps must be taken to minimize the burden of sanctions regimes on specially affected States, but had reservations about some of the proposals put forward, such as the establishment of a trust fund, which did not seem desirable or viable in the light of the Organization's financial difficulties. Efforts should focus not on establishing new practices and procedures, but on improving existing ones, particularly with respect to the flow of information to and from affected States.

41. He welcomed the steps taken pursuant to General Assembly resolution 50/51 to develop expertise within the Secretariat for analysing the effects of sanctions. He wondered whether the Special Committee should continue to consider sanctions regimes in general, when other forums had been established for that purpose, such as the sanctions subgroup of the Informal Open-ended Working Group on An Agenda for Peace. To avoid duplication of effort and inconsistencies of approach, the Special Committee should focus on the question of assistance to third States affected by the application of sanctions and the implementation of General Assembly resolution 50/51. He welcomed the decision to open the Special Committee to all States Members of the United Nations, and hoped that it would focus on issues which were within its mandate and on which it could be expected to reach a consensus.

42. Mr. POUKRE-KONO (Central African Republic) also welcomed the decision to open the Special Committee to all Member States. That initiative reflected the spirit of consensus which had always prevailed in the Special Committee, and he hoped that a similar initiative would be taken with respect to the United Nations Commission on International Trade Law (UNCITRAL).

43. While third States affected by the application of sanctions should be adequately compensated, it was especially important to take preventive measures. The Security Council and its sanctions committees should objectively analyse the factors at stake and should pursue their efforts to increase the effectiveness and transparency of their work. The establishment of a mechanism through which the Security Council could consult with affected third States, and other departments of the United Nations should help it to address requests for compensation. The case-by-case approach seemed to be the best method of dealing with the different problems that arose in connection with the implementation of different sanctions regimes.

44. He appreciated the efforts made to continue to produce the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the

Security Council despite financial and administrative difficulties. The proposals concerning the Trusteeship Council should be studied further, as should the ideas contained in the Russian Federation's working paper on the implementation of Article 50 of the Charter, such as the concept of "humanitarian limits". He also welcomed the proposals of the Libyan Arab Jamahiriya and Cuba on the Organization's role in maintaining international peace and security, and that of Sierra Leone on the settlement of disputes between States. The Special Committee should become more deeply involved in the process of reforming the United Nations system, but should confine itself strictly to the legal aspects of the relevant issues.

The meeting was suspended at 11.35 a.m. and resumed at 11.45 a.m.

AGENDA ITEM 120: HUMAN RESOURCES MANAGEMENT

Reform of the internal system of justice in the United Nations Secretariat

45. The CHAIRMAN recalled that, in its resolution 50/240, the General Assembly had invited the Sixth Committee to examine, as a matter of priority, at the beginning of the fifty-first session of the General Assembly, the legal implications of the proposals of the Secretary-General contained in his reports on the reform of the internal system of justice in the United Nations Secretariat.

46. Mr. CONNOR (Under-Secretary-General for Administration and Management), setting out the policy reasons for the proposed changes in the internal system of justice and the goals of those changes, said that there had long been widespread dissatisfaction with the system. The existing system had been established many years earlier for a much smaller staff and was not designed to accommodate the needs of almost 15,000 staff members who filed more than 100 appeals per year. It was slow, ponderous, complex and expensive in terms of staff resources. The General Assembly had repeatedly stressed the importance of a just, transparent, simple, impartial and efficient system, which the proposals before the Committee aimed to achieve.

47. The Secretary-General's proposal would encourage the early resolution of disputes and professionalize the consideration of appeal and disciplinary cases. Three measures were being proposed to promote the early reconciliation of disputes. First, managers, administrators and human resources officers would receive training to emphasize dialogue, positive communication, exchange of information and reconciliation of differences, with the aim of identifying the real concerns of staff and determining how they could be met within the applicable rules. Next, ombudsman mediation panels were planned at all major duty stations. Mediation was a very effective means of dispute resolution which was not widely used within the United Nations system. Those panels would mediate disagreements, grievances, and discrimination issues raised informally by staff members, under the guidance of a coordinator. Lastly, two additional posts for Review Officer would be established to provide substantive review of administrative decisions. Those officers would not be part of the Office of Human Resources Management, but would report to the Under-Secretary-General for Administration and Management. They would review the merits of each case, which would help to reduce the number of disputes actually reaching the appeals stage

and reduce delays later in the process by ensuring that relevant information had already been assembled before the formal submission of an appeal.

48. In an effort to professionalize the process, it was proposed that a Legal Officer should be appointed to the current Panel of Counsel. An arbitration board would replace the volunteer Joint Appeals Board. Thus, a small number of professional arbitrators would replace the hundreds of volunteers currently performing those duties. The required numbers of volunteers were no longer available to handle the volume and complexity of cases. Moreover, many volunteers did not have the requisite technical knowledge.

49. The Secretary-General believed that arbitration best met the needs of the Organization. It would provide a permanent structure for dealing with all appeals and would eliminate the need to take regular staff away from their duties in executing the work programmes mandated by the General Assembly. The arbitrators would be independent, rather than staff members subject to the authority of the Secretary-General, thereby avoiding any conflict of interest. The Joint Disciplinary Committee would be replaced by a disciplinary board in both New York and Geneva, and the chairpersons of the arbitration boards would also chair the new boards to ensure that professionals experienced in evaluating evidence would preside. The other members of the panels would be staff members selected on the basis of their fairness, impartiality and ability to understand the technical aspects of the cases. The Secretary-General had also proposed that a full-time Legal Officer should be appointed to serve full-time on the Panel of Counsel, and should be available to advise staff members.

50. The Secretary-General had submitted his reform proposals before the current budgetary restrictions had been imposed. He had already introduced a limited number of measures which were within his authority but did not entail additional resources. For example, many managers had received training to develop their skills in conflict resolution, and the Staff Rules would shortly be amended to encourage reconciliation in the context of the Joint Appeals Board. In addition, a small claims procedure for claims of less than $1,500 had been implemented. The Joint Appeals Board in New York had amended its rules of procedure to accommodate that change, and it was hoped that the Boards at other duty stations would follow suit.

51. Mr. MAZILU (Romania) said that the Secretary-General's objectives of facilitating earlier resolution of disputes and professionalizing the membership of appeals and disciplinary panels were fully justified. New efforts must be made to develop a management culture that encouraged staff members to make their maximum contribution towards effectiveness and efficiency. The main goal of the reform process should be the promotion of a fair and efficient internal justice system in the Secretariat by guaranteeing early reconciliation and resolution of disputes in a collegial atmosphere.

52. There were divergent views, however, regarding the ways and means to achieve those objectives, in particular the proposal to replace the existing Joint Appeals Board by an arbitration board. The independence of the arbitrators was one of the main problems. Doubts had been expressed about their ability to remain independent if they were recruited and paid by the United Nations Secretariat. His delegation supported the view expressed by the

Advisory Committee on Administrative and Budgetary Questions (ACABQ) that the selection process should ensure that the arbitrators were not subject to any form of control by staff in the exercise of their functions, in order to eliminate the perennial problem of conflict of interest.

53. Another major problem area was adequate legal representation for staff members. In order to maintain staff confidence in the arbitration process, the principle of staff-management parity would have to be maintained. His delegation shared the view that it was essential for appellants to have similar representation. The concern expressed by the Staff Union that, currently, too many staff members went through the appeals process without the effective assistance of counsel because too few were available could not be underestimated. The fair and efficient resolution of disputes would require the strengthening of the Office of the Coordinator of the Panel of Counsel.

54. His delegation supported the Secretary-Generals proposal to replace the Joint Disciplinary Committee by a disciplinary board. From a legal standpoint, the powers of such a board were consistent with the provisions of article X of the Staff Regulations. He therefore endorsed the proposal that the disciplinary board's statute should stipulate that it had jurisdiction to hear charges brought by the Secretary-General and appeals by former staff members, to recommend the imposition of one or more disciplinary measures or to drop the charges, and to recommend that the Secretary-General's decision should be maintained, rescinded or revised. Such powers were also consistent with the Charter, which made the Secretary-General responsible for ensuring that the staff met the highest standards of conduct.

55. In the light of those proposals, the appropriate changes should be made in the Statute of the United Nations Administrative Tribunal. There was a need to improve the entire internal system of justice in the United Nations Secretariat, including the activity of the Tribunal.

56. While his delegation was not in favour of postponing full implementation of the reform, it agreed that a fair and efficient resolution of each case must be guaranteed. The early resolution of employment disputes was essential to the new management culture in the Secretariat. The more stringent demands resulting from streamlining and staff shortages resulting from mission assignments meant that staff members would not longer be able to volunteer their time to the extent required for an efficient disposition of the cases. The professionalization of the internal system of justice would ensure greater efficiency, not only of the system of justice itself, but the Organization's overall activity.

57. Mrs. ESCARAMEIA (Portugal) said that arbitration was normally binding and voluntary, and the choice of arbitrator was made by both parties. In the Secretary-General's proposal, arbitration was also voluntary and binding, but how the arbitrator would be chosen remained unclear. In order to foster confidence, both parties must believe that the arbitrator was truly independent, and therefore the selection procedure must ensure that there was no perception that the arbitrator was controlled by the Administration. She would welcome clarification of the selection procedure. She also wished to know the duration

of the sessions of the proposed arbitration board, which was not mentioned in the proposals.

58. With regard to the Administrative Tribunal, a review of its powers and functions was needed.

59. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that the staff would be fully consulted on the composition of the arbitral group and would have a voice in the selection process. For the sake of consistency, once an arbitral group had been formed, it would remain together; the process of searching repeatedly for arbitrators would be self-defeating. With regard to the duration of its sessions, it was envisaged that the arbitration board would meet for 10 weeks in New York and 6 weeks in Geneva per year.

60. Mr. ZACKLIN (Office of Legal Affairs) said that the Office of Legal Affairs viewed the independence of the arbitrators as a matter of fundamental importance; it intended that staff should be consulted at all stages of the selection process. He agreed with the representative of Portugal that the arbitrators must not only be independent, but they should be seen to be independent by the staff and Administration.

61. Mr. LEGAL (France) said that proposals regarding arbitration seemed to run counter to the current practice of the United Nations and many of its Member States for the settlement of disputes. He would like more information on the legal foundations for the proposal and on the other options that had been explored. It seemed to him that the entire system of staff representation on arbitration panels was being discarded solely because of excessive delays. Perhaps consideration should be given to making a greater investment in the task of staff representation by providing training and recognition of those duties as a useful contribution to the goals of the Organization, rather than giving those duties to professionals who were assumed to be more competent.

62. In the light of the responses to the proposals received from ACABQ, the Administrative Tribunal, the Staff Union and the Fifth Committee, among others, he wondered if the current proposals reflected those comments and criticisms.

63. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that the genesis of the proposed reform was the widespread feeling that the time had come to change a system with which both staff and Administration were unhappy. Professionalization of the system was an important objective which had the support of the Staff Union. In formulating his proposals, the Secretary-General had sought to balance the concerns of all the parties involved. He therefore regretted that the Staff Union had changed its position after it had welcomed the Secretary-General's earlier report. The Secretary-General nevertheless intended to go forward with the current proposals.

64. Mr. WELBERTS (Germany) sought confirmation of his understanding that it was for an individual staff member to decide whether to have recourse to the proposed ombudsman panels or to start the review process immediately. He would also welcome clarification of the status of the members of the proposed disciplinary board.

65. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that staff members would have a choice. The proposed ombudsman panels should be particularly welcome, since there was currently no reconciliation process, and it was important to make such a facility available to staff. The Chairman of the disciplinary board, unlike its members, would be a professional. The proposed arbitrators would be United Nations officials but would not come under the jurisdiction of the Secretary-General. In other words, their status would be akin to that of the Chairman of the Advisory Committee on Administrative and Budgetary Questions.

66. Mrs. FERNÁNDEZ de GURMENDI (Argentina) wondered whether the centralization of the appeals process in New York and Geneva would really prevent delays in the hearing of appeals. It would be helpful if statistics could be made available on the number of Joint Appeals Boards in operation under the current decentralized system of justice.

67. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that one of the main reasons for delays was the difficulty in securing the services of panel members. Staff members rightly believed that such service did nothing to enhance their career prospects. The problem was particularly acute at duty stations away from Headquarters, which were understaffed. It was therefore not a question of decentralization versus centralization; what was important was to have a ready source of panellists so that the process could be accelerated and its efficiency enhanced.

68. Ms. PROIDL (Austria) asked to whom staff in Vienna should address their appeals and who would be responsible for their travel expenses.

69. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that staff in Vienna would address their appeals to the arbitration board in Geneva. Members of the board would travel to Vienna at the Organization's expense.

70. Ms. WONG (New Zealand) sought further clarification of the status of members of the proposed arbitration board and the type of contract they would have. With regard to the appointment of the board members in consultation with the staff, she wondered whether any thought had been given to a system in which management and staff would appoint equal numbers of members who would in turn appoint the remaining members. She would also welcome an explanation of why the proposed grounds for appeals by staff were so restricted.

71. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that no distinction should be drawn between the expression "after consultations with the staff" and "in consultation with the staff". What was intended was that the staff should participate in the choice of arbitrators, who would be under contract for a fixed period of time.

72. Mr. ZACKLIN (Office of Legal Affairs) said that the appeals process must be viewed in the context of the overall reform of the Organization, the purpose of which was the streamlining of operations. Professionalization of the arbitration board would enable a larger number of cases to be processed. The current caseload of 120 cases a year was four to five times the caseload of 5 or

10 years previously. The reduction of the case-load therefore justified the limitations placed on the grounds for appeal by staff.

73. Ms. TANO (Côte d'Ivoire) asked for further information on the legal sources on which the proposed reforms were based. She would also welcome clarification of the distinction between the proposed disciplinary procedures and the dispute settlement procedures.

74. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that the proposals for reform of the internal system of justice had simply evolved from the discussions in the Staff Committee and did not represent the cloning of any particular system. The reforms were aimed at developing a system with which both staff and management could feel comfortable. The proposed disciplinary board would be composed of the chairperson of the arbitration board and two staff members, and would make recommendations to the Secretary-General.

75. Mr. ZACKLIN (Office of Legal Affairs) said that it was important for the operation of the new disciplinary board to respect the Secretary-General's authority in matters related to the disciplining of staff.

76. Mr. HAYES (Ireland) asked whether the members of the arbitration board would in fact be appointed by agreement between the Administration and staff. He also wondered whether the jurisdiction of the Administrative Tribunal would be included in the reform process. He noted, finally, that delays by both sides in responding to requests for additional information was a major reason for delays in the appeals process. He wondered whether consideration had been given to that factor and, if so, what measures had been proposed to deal with it.

77. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that the staff would be included in the review of the qualifications of potential arbitrators and a genuine effort would be made to accommodate its views. Indeed, it would be foolish for the Secretary-General to proceed with an appointment if the staff was concerned about the candidate's qualifications. Nevertheless, the Secretary-General would have the final word in such appointments. With respect to the Administrative Tribunal, the only area of change would be the binding nature of the arbitration.

78. Mr. ZACKLIN (Office of Legal Affairs) explained that no change was envisaged in the working of the Administrative Tribunal. If the package of reforms was approved, however, there would of course be consequential changes in the Tribunal's Statute.

79. Mr. SULAIMAN (Syrian Arab Republic) drew attention to paragraph 39 of the Advisory Committee's report (A/50/7/Add.8) and asked what action was being taken by management to avoid misunderstandings between staff and their supervisors, who were sometimes to blame. He would welcome clarification of the Administration's position on proposals related to the early reconciliation and resolution of disputes aimed at minimizing the actual number of matters referred to formal proceedings. Finally, he wished to know what alternative reforms of the internal justice system had been considered by the Secretary-General.

80. Mr. CONNOR (Under-Secretary-General for Administration and Management) said that considerable progress had been made recently in reducing delays caused by the late submission of requested documentation and the failure to follow proper procedures. With the support of the Staff Union, a review of the procedures in respect of small claims had already been carried out. It was now proposed to expand that review to include the actions of the Administration and to simplify the rules currently followed by the Administration. The main focus of the reform, however, was to professionalize the justice system and to increase the resources available to the staff in order to ensure that the system was perceived by staff as one in which they had a fair stake.

81. Although he looked forward to seeing the ombudsman panels in place, their cost must be offset by savings elsewhere in the system. He did not think that increased resources should be devoted to additional layers of review. The current system of justice was already creaking and had become unresponsive to needs largely because the staff was already overburdened and had little incentive to participate in the system.

82. Ms. [illegible] (Mexico) said that it was important for staff to have competent legal counsel in whom they had confidence. She therefore wondered why it was not considered prudent, in the context of the current reform, to allow staff the benefit of outside legal counsel.

83. Mr. [illegible] (Under-Secretary-General for Administration and Management) said that the Administration was wary of the difficulty in determining the exact cost of outside lawyers. It sought a more modest solution in the professionalization of the system.

84. Mr. [illegible] (Syrian Arab Republic) said that the replies given to his questions were incomplete, and he would welcome assurances that the clarifications sought would be provided at a later meeting.

85. The CHAIRMAN said that the request of the representative of the Syrian Arab Republic had been duly noted and the clarifications sought would be given the following day.

The meeting rose at 1.10 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
8th meeting
held on
Monday, 30 September 1996
at 3 p.m.
New York

SUMMARY RECORD OF THE 8th MEETING

Chairman: Mr. ESCOVAR SALOM (Venezuela)

CONTENTS

AGENDA ITEM 150: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.8
18 November 1996
ENGLISH
ORIGINAL: FRENCH

96-81246 (E)

/...

The meeting was called to order at 3.05 p.m.

AGENDA ITEM 150: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/51/33 and A/51/317)

1. Mr. THAHIM (Pakistan) welcomed the fact that the sessions of the Special Committee would in future be open to all States Members of the United Nations, thus ensuring not only transparency in the consideration of issues but also widespread participation in the Special Committee's work.

2. In that context it was also essential to ensure transparency in the work of United Nations organs and in particular in consultations in the Security Council. There was a growing realization of the need to increase the number of non-permanent members of the Security Council in view of the substantial increase in the membership of the Organization, particularly among small and medium-sized States. His country was, however, opposed to any expansion of the permanent membership of the Security Council, since that would run counter to the fundamental principle of the sovereign equality of States. Such expansion would, in fact, merely serve to accommodate the interests of a few States and alienate the small and medium-sized States which constituted an overwhelming majority in the General Assembly.

3. The Security Council should consult the Member States that were not represented in its meetings, particularly those likely to be affected by its decisions, and should establish arrangements to enable it to take more effective account of their views. The Member States represented in the Security Council should be fully conversant with the concerns of the majority of the States that were not represented in its meetings. In that context, his delegation wished to insist on the need to consult third States affected by the application of sanctions under Chapter VII of the Charter. The work of the Special Committee should provide a means of establishing a comprehensive system-wide mechanism in order to assist third States to address the economic difficulties arising from the imposition of sanctions under Article 50 of the Charter.

4. His delegation supported the deletion of the "enemy States" clauses from Articles 53, 77 and 107 of the Charter, which were no longer relevant.

5. Noting the proposal concerning the settlement of disputes, he pointed out that if Member States failed to abide by the principles of the United Nations as set forth in its resolutions, or to implement them, the Organization's credibility would suffer internationally.

6. With reference to the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, his delegation, while mindful of the difficulties inherent in their preparation, considered that their publication was a matter of the utmost importance and that Member States should be kept informed of any difficulties connected with their preparation and should have access to those documents on the Internet. The Secretariat should therefore make a start on bringing them up to date as a means of priority.

7. His delegation welcomed the Special Committee's decision to remain in contact with the various working groups that were deliberating on issues similar to those falling within its mandate, commended the useful work it had done on the future of the Trusteeship Council and called on it to continue its consideration of that matter at future sessions.

8. Mr. AL-ADHAMI (Iraq), referring to the report of the Special Committee, observed in connection with chapter III, concerning the maintenance of international peace and security, that the working paper submitted by the Russian Federation contained many positive elements. That paper, which mainly concerned the sanctions regime and its humanitarian dimension, was consistent with the provisions of the Charter and thus disregarded all political considerations and selfish interests. It did not, however, address certain fundamental problems, such as how sanctions could be applied in a manner fully consistent with the spirit of the Charter.

9. In the view of his delegation, it was impossible to attain that objective in the absence of an impartial legal mechanism; in that context, the body best able to play such a role was the International Court of Justice.

10. The revised proposal submitted by the Libyan Arab Jamahiriya on the matter also contained positive elements, particularly paragraph 5, which dealt with the negative effects of the rule on the unanimity among the permanent members of the Security Council in decision-making, limitation of the use of the rule, questions in the consideration of which the rule should be suspended, and the non-application and final repeal of the rule.

11. Referring to chapter IV, concerning the peaceful settlement of disputes between States, his delegation had no firm view on the proposal made by Sierra Leone concerning the creation of a mechanism to assist in the settlement of disputes. However, it questioned the need for such a mechanism; many international instruments already addressed that issue and the problems were due more to a failure of political will on the part of the international community than to a lack of such instruments.

12. Mrs. CUETO MILIAN (Cuba) welcomed the fact that the Special Committee was now open to all States Members of the United Nations. Although the report of the Secretary-General (A/51/317) and General Assembly resolution 50/51 - which were the outcome of four years' consideration by the Special Committee of the implementation of the Charter provisions related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter - were a move in the right direction, they were no more than a starting point in the context of the formidable task entrusted to the Special Committee. Countries directly affected or third States threatened by the application of sanctions wished the problem to be viewed in a more global perspective to enable both questions of procedure and substantive issues to be addressed.

13. With respect to the very idea of the application of sanctions, her country maintained that the Security Council should resort to such measures only where there was an actual threat to international peace and security. Furthermore, the purpose of sanctions should be to contribute to a lasting political

resolution of the conflict in question and to reflect the interests of the international community and not those of a single country or group of countries. Account should also be taken of the political and human cost that sanctions would impose on the civilian populations of the countries affected. Furthermore, sanctions should not have the ulterior objective of adversely affecting third States. For that reason, in accordance with Article 50 of the Charter, her delegation considered that the Security Council had an obligation to find solutions to special economic problems confronting such States and arising from the sanctions it had approved. As the Security Council was the organ that took the decisions to impose sanctions, it could not transfer that responsibility to other actors on the international scene or to international financial institutions.

14. Referring to the idea expressed by certain delegations that the Special Committee's work should be given a new orientation in order to enhance its importance, her delegation took the view that, for example, consideration of the criteria for the imposition or lifting of sanctions, especially a legal criteria, and the concept of the "humanitarian limits" of sanctions, might indeed be included in the mandate of the Special Committee. Moreover, the Special Committee had a potentially important role to play as technical adviser to working groups of the General Assembly which, in one way or another, might have to reflect in the course of their work on the letter and spirit of the Charter, but without interfering in the mandate of such groups.

15. Her delegation reaffirmed its intention to submit to the Special Committee at its next session a new revised version of the working paper that it had originally submitted in 1995, incorporating the outcome of negotiations by the working groups of the General Assembly on the restructuring of the Organization, particularly the strengthening of the work of the General Assembly and the reform of the Security Council.

16. With respect to the Trusteeship Council, her delegation agreed with the delegation of Malta that there was no overriding need to abolish the mandate of that organ, particularly in the context of an isolated reform process. In any event, it was an inactive body and had no actual impact on the financial crisis facing the Organization, the true causes of which were a matter of public knowledge. It would therefore be rash to propose the replacement of the Trusteeship Council by a new organ without assessing all the political and financial implications of such a decision.

17. With regard to the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, she considered that the publication of such works at regular intervals, would contribute to transparency, oblige United Nations organs to be accountable for their activities and provide a means of preserving the institutional memory of the Organization. However, any action to reduce the backlog in their publication should be carried out within the limits of existing resources. Furthermore, their publication should be financed with the assistance of external resources without imposing any additional burden on the Organization.

18. Lastly, her delegation considered that it would be in the interest of the Special Committee to make a judicious selection of the various matters to be

included in its work programme and that instead of considering shortening its sessions or randomly deleting items from its agenda, it would be appropriate to take a pragmatic, realistic and impartial view of the Special Committee's future.

19. Mr. OBEIDAT (Jordan) said that the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter was becoming increasingly serious; General Assembly resolution 50/51 and the report of the Secretary-General (A/51/317) helped to provide solutions in that area. The resolution was a step in the right direction and deserved continued support. In reviewing requests for assistance submitted by the third States in question, the relevant provisions of the Charter should be interpreted and applied in accordance with the letter and spirit which had prevailed when they had been drafted.

20. The provisions of the Charter, in particular Articles 49 and 50, formed an excellent basis for establishing a permanent mechanism with a view to assisting those States and enabling them to enjoy the rights guaranteed to them under the Charter.

21. His delegation believed that, within the context of such a mechanism, all third States affected or liable to be affected by the imposition of sanctions should be included in the decision-making. Consideration should be given to all means which would make it possible to provide short- or long-term assistance to such countries and to share responsibilities in order to avoid penalizing certain States because of their geographical proximity or their economic relations with the State on which sanctions were imposed. In seeking solutions, the role of the principal organs of the United Nations, in particular the General Assembly and the Economic and Social Council, and the international financial institutions must be stressed. It was unquestionably the responsibility of the Security Council to find effective solutions to the special economic difficulties of third States which consulted it in that connection, since it was the organ which decided the imposition of sanctions. His delegation believed that a working group should be established to study all proposals in that regard, in particular those contained in the report of the Secretary-General (A/50/361) and in his Agenda for Peace.

22. Judging from its exhaustive consideration of the question of the implementation of the provisions of the Charter concerning third States, it must be concluded that the Special Committee was the most appropriate organ to establish the necessary legal framework for the solution of the problem, in accordance with its mandate, particularly since, in future, it would be open to all States Members of the Organization.

23. Lastly, in view of the ever-greater impact of increased recourse to sanctions, Jordan congratulated the Russian Federation on the very thorough working paper it had submitted, which should be carefully reviewed.

24. Mr. SHAH (India), referring to the question of assistance to third States affected by the application of sanctions under Chapter VII of the Charter, said

that, at its most recent session, the Special Committee on the Charter had invited the Sixth Committee to consider during the current session the question of an organizational framework for addressing further the implementation of the provisions of the Charter relating to assistance to third States. That task should therefore be undertaken on a priority basis.

25. Unfortunately, the report of the Secretary-General on Article 50 (A/51/317) had not been issued in sufficient time to allow for an in-depth analysis of the questions it raised. It seemed, however, that it was but a limited response to the requests formulated in resolution 50/51, which, moreover, was merely procedural in nature. Nonetheless, it would be preferable if the Secretariat assisted Member States in determining the best way to fulfil the commitment undertaken in Article 50 of the Charter. The most desirable solution would be to establish a permanent mechanism within the United Nations which would function automatically whenever States felt the impact of sanctions imposed on other States. The mechanism should be provided with the necessary financial resources from the assessed contributions of Member States. In addition, the Sixth Committee should establish an open-ended working group to examine on a priority basis the question of the impact of sanctions on third States. The Committee should give a similar mandate to the Special Committee in case the former working group was unable to conclude its work during the current session.

26. His delegation would follow closely any debate on the proposed establishment of a dispute settlement service, but believed that it was extremely important to avoid the risk of duplication with existing mechanisms.

27. The Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council were vital references and should continue to be published and updated within the context of available resources.

28. The role of the Trusteeship Council was too important an issue to be dealt with from a purely legal angle by the Special Committee. All Member States should be consulted on that topic.

29. Lastly, his delegation was agreeable to giving more in-depth consideration to the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions, submitted by the Russian Federation. It wished to point out that similar work had already been initiated by the Special Committee on Peacekeeping Operations (Committee of 34), which was perhaps more competent to handle it effectively.

30. Ms. WILMSHURST (United Kingdom), referring to the future of the Special Committee on the Charter, said that the Sixth Committee should not perpetuate its mandate without any changes. Its programme of work was very light and could be handled just as well, if not better, by the Sixth Committee itself. At the previous session, the United Kingdom had already proposed biennializing the sessions of the Special Committee. Another solution would be to reduce the length of the session to one week. In any case, it was an important question on which other delegations should express their views.

31. Concerning the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, the difficulties confronting

the Legal Counsel and certain departments under financial constraints should be taken into account. In that context, a number of proposals had been put forward during the previous session which did not require additional resources. Her delegation was fully prepared to discuss with the Legal Counsel and other interested delegations ways and means to enable the hard-pressed Office of Legal Affairs to carry out that valuable work.

32. Mr. SYARGEEU (Belarus), recognizing that the problem of the impact of sanctions on third States must be considered urgently, said that resolution 50/51 was a positive element but that it must be viewed as a point of departure in seeking more concrete mechanisms to assist third States. Moreover, as the resolution was merely procedural in nature, the Sixth Committee must go beyond it. The implementation of the proposals formulated by the Secretary-General in his report on the question (A/51/317) should make it possible to assist third States without weakening the impact of sanctions in the process. In addition, the United Nations sanctions committees and organizations should now take a more flexible approach. All the consequences which a sanctions regime was likely to entail must also be assessed; in that context, his delegation supported the idea of a mechanism for consultations with third States. Lastly, questions relating to partial compensation in the form of bilateral assistance should be considered.

33. Concerning the future of the Trusteeship Council, Belarus supported the proposal made by the working group on that question in the report of the Secretary-General (A/50/1011).

34. As for peacekeeping and international security, the Special Committee could continue its work on the development of cooperation between United Nations agencies and regional organizations.

35. Lastly, his delegation supported efforts to publish and update the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council at the earliest possible date.

36. Ms. BOUM (Cameroon) said that her delegation had always openly supported a more ambitious mandate for the Special Committee on the Charter. It was for that Committee, and not the working groups established by the General Assembly, to examine as a matter of priority the various aspects of the reform of the United Nations. However, it would not be appropriate to prolong the existence of the Special Committee artificially by seeking at all costs to give it new tasks; the Committee's mandate should be renewed only if that was justified.

37. As for the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII, attention should be paid to the claims of third States and responsibility for the resolution of their difficulties lay with the Security Council. Her delegation therefore welcomed the adoption of General Assembly resolution 50/51 and the report (A/51/317) submitted by the Secretary-General pursuant to paragraph 4 of that resolution. The working paper produced by the Russian Federation could be of great assistance in finding a durable solution to that problem.

38. The Sierra Leone proposal for the establishment of a dispute settlement service placed appropriate emphasis on the need to continue considering ways of inducing parties to a dispute to resolve it peacefully; however, the proposal concerned an area already covered by the provisions of the Charter and numerous international legal instruments.

39. As for the Trusteeship Council, more detailed consideration should be given to the proposals made regarding its future.

40. Lastly, her delegation welcomed the fact that, for the first time, all Member States had participated on an equal basis in the session of the Special Committee, in a development in keeping with the efforts to make the functioning of the Organization more transparent and democratic.

41. Mr. BELLOUKI (Morocco) said that the international community should try to find appropriate solutions to the problems of third States affected by sanctions, both to preserve those States' legitimate interests and to maintain the effectiveness of sanctions regimes. The document presented by the sanctions subgroup was a step in the right direction, but it would be necessary to go further, beyond the provisions of Article 50 of the Charter. His delegation welcomed the adoption of resolution 50/51, as well as the content of the Secretary-General's report (A/51/317), which tended in the same direction. It was also gratifying that the Secretariat intended to provide better information and early assessments for the Security Council about the actual or potential effects of sanctions on third States and to develop a uniform methodology for determining, in any situation, the modalities of the necessary assistance. Account should be taken of the possible long-term effects of sanctions on third States, and the analysis of direct and indirect effects of sanctions contained in the Secretary-General's report was highly relevant. There was also a need for improved consultations between third States, the Security Council and donors, even before sanctions were imposed. The working paper presented by the Russian Federation could also be of considerable use in the consideration of the question.

42. In the area of the maintenance of international peace and security, the proposal presented by the Libyan Arab Jamahiriya contained a number of interesting ideas on which Member States could comment when discussing the strengthening of the role of the United Nations.

43. Regarding the peaceful settlement of disputes between States, his delegation was still not convinced of the usefulness of the service proposed by Sierra Leone.

44. As for the Special Committee's future work programme, the working paper submitted by the Russian Federation deserved careful consideration. Lastly, the efficiency and credibility of the Special Committee should be enhanced so that it could contribute to the process of reforming the Organization.

45. Ms. RONEN (Israel), referring to the proposal submitted by Sierra Leone for the establishment of a dispute settlement service, questioned the usefulness of a new service, in the light of the numerous existing international legal instruments relating to the issue.

46. As for the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts, her delegation believed that the time had come for the formulation of principles to guide the operation of such mechanisms, although it was yet to be determined how that objective should be achieved. Such mechanisms must be sufficiently flexible to be adapted to the particularities of each conflict. The list of United Nations mechanisms to which the basic principles applied should be exhaustive, in order to provide clarity, and it should be made clear that they applied only to international crises and conflicts and not to internal conflicts. It was also important that the parties concerned should consent to the implementation of a peacekeeping mechanism.

47. Regarding the future of the Trusteeship Council, her delegation believed that the Council should not be abolished, nor would it be opportune to alter its mandate at the current stage. The Council might renew its activity, and moreover its abolition would entail amending the Charter, an unnecessarily cumbersome procedure.

48. It was essential that the provisions of the Charter should be implemented. However, the principle of the sovereign equality of Member States was not being honoured. Israel, the only State which belonged to no regional group, was not represented on a number of organs and subsidiary bodies, including the Economic and Social Council. It was likewise unable to participate in or contribute to the work of specialized bodies established by the United Nations. Israelis could be elected only in those cases where elections were not dependent on the regional group system.

49. In the future work of the Special Committee, it would be preferable to give substance to the principles of the sovereign equality of States and the universality of the United Nations by setting up new systems of representation on the various organs and bodies.

50. Mr. NGUYEN DUY CHIEN (Viet Nam) said that the continuing relevance of the issue of assistance to third States affected by the application of sanctions was due to the fact that case-by-case measures had not been commensurate to the gravity of the problems facing those States. The adoption of resolution 50/51, while a step in the right direction, was only a starting point. His delegation therefore supported the establishment of a working group within the Sixth Committee to discuss the matter further.

51. The Special Committee should play a more active part in the process of reforming the United Nations, instead of restricting itself to an observer role. By virtue of its mandate and open-ended composition it was well placed to contribute to the reform of the Organization by strengthening the role of the General Assembly, increasing the membership of the Security Council in the interest of developing countries in accordance with the principle of the sovereign equality of Member States, and improving the Council's procedures and working methods.

52. The Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council were extremely useful publications, which should be published on schedule despite the financial difficulties of the United Nations.

53. Ms. FERNANDEZ de GURMENDI (Argentina) said that the orientation of the Special Committee's future work and its working methods must be given careful consideration. Although it had made a very important contribution, it was clear that it was experiencing a serious crisis brought about, if not worsened, by the fact that the most important aspects of the reform and modernization of the United Nations were being discussed in other bodies, resulting in a marginalization of the Committee. Member States must recognize that problem to enable appropriate measures to be taken; the status quo was unacceptable.

54. Since Member States were mostly in favour of the continued existence of the Special Committee, efforts should be made to improve its effectiveness. First of all, more attention should be given to its work programme, to avoid submitting to it too many issues of varying relevance, leading to initiatives that went nowhere. The sessions should be shorter and focus on a limited number of questions. The reduction of its previous session to two weeks was a step in the right direction. Lastly, in the light of its legal vocation, the Special Committee should preferably turn its attention to matters having clear and significant implications in the legal field.

55. In her delegation's view, the question related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter and the basic principles and criteria relating to peacekeeping operations were interesting and should be given further consideration.

56. On the other hand, she had reservations concerning the proposals to abolish the Trusteeship Council or amend its mandate. Indeed, it would be pointless to get involved in a complex venture to amend the Charter in order to abolish a body which did not consume resources and whose name alone symbolized the Organization's achievements in the area of decolonization. Moreover, amending the Trusteeship Council's mandate would be tantamount to abolishing the current body and establishing a new one, which would also require the amendment of the Charter. At a time when the Organization was trying to streamline its structures, the usefulness of such a venture was questionable.

57. The Mexican delegation's proposal to study means of revitalizing the role of the International Court of Justice as the principal judicial organ of the Organization was very interesting, and her delegation was prepared to consider any concrete proposals to that end.

58. Mrs. KALEMA (Uganda) said that the continuing changes in international relations made it necessary to restructure the United Nations and revitalize its bodies. There was no need to emphasize the importance of the ongoing debate on the expansion of the Security Council, its working methods and relations with the General Assembly. In her delegation's view, the reform of the Security Council should aim at achieving greater transparency in its method of work, more democratic decision-making, and at ensuring that the Council's composition truly

reflected the increased membership of the Organization. The Special Committee's contribution towards achieving that goal was therefore commendable.

59. Concerning the question of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, she believed that General Assembly resolution 50/51, which inter alia covered consultations between the Security Council and affected third States, the early assessments of sanctions before their imposition and the role of international financial institutions, was a step in the right direction. However, the modality of those arrangements should be elaborated further. She still believed that the establishment of a special mechanism, such as a trust fund, which had been discussed at the 1995 regular session of the General Assembly, should not be abandoned completely but, rather, should be analysed further and refined.

60. In her delegation's view, the Trusteeship Council should not be given a new mandate because that might result in duplication of activities already being carried out by other United Nations bodies. Since the Trusteeship Council did not cost anything to the Organization, it might be wise not to take a drastic decision and to continue to give careful consideration to the issue.

61. The Sierra Leonean delegation's proposal entitled "Establishment of a dispute settlement service offering or responding with its services early in disputes" merited further consideration.

62. The publication of the Repertory of Practice of United Nations Organs and of the Repertoire of the Practice of the Security Council should be continued. Efforts to overcome the Secretariat's budgetary constraints should therefore be given serious consideration.

63. Mr. MASUKU (Swaziland) said his delegation remained convinced that the United Nations represented the most appropriate forum for the maintenance of international peace and security and the peaceful settlement of disputes. Concerning economic sanctions imposed under Chapter VII of the Charter, there must be extreme flexibility if such sanctions were to be applied swiftly and effectively. In that regard, he was therefore satisfied with the provisions of resolution 50/51.

64. The proposal submitted by the Sierra Leonean delegation concerning the establishment of a dispute settlement service incorporated the concept of consent between parties to a dispute and its practicability deserved careful consideration.

65. Concerning the Trusteeship Council, his delegation was in favour of maintaining the status quo, since any attempt to alter the role of that body would have both a legal and a political impact on the Charter.

66. Swaziland attached great significance to the publication of the Repertory of Practice of United Nations Organs and of the Repertoire of the Practice of the Security Council, as such publications could be of assistance not only to

the States and the Secretariat, but also to those interested in research on the activities of the Organization.

67. In his view, the Special Committee, as the body with legal expertise, should work closely with the various working groups considering the reform of the Organization.

68. Mr. RI (Democratic People's Republic of Korea) said that, in his view, the reform of the United Nations should focus on strengthening the powers of the General Assembly, the supreme body of the Organization, within which all Member States would be represented on an equal footing. It was therefore crucial to invest the Assembly with powers that enabled it to consider questions relating to international peace and security and to the peaceful settlement of disputes within the framework of a mechanism under which it would approve all decisions concerning the use of force or the imposition of sanctions by the Security Council. Thus, such decisions would fully reflect the wishes of all Member States.

69. Moreover, Member States were unanimously in favour of the expansion of the Security Council and the improvement of its functioning. Indeed, developing countries, which constituted the majority of Member States, must be duly represented within that body. In that regard, his delegation wished to propose the expansion of its membership through the creation of 10 additional seats, which would go to African, Asian and Latin American States in particular. Such a solution would correct the current imbalance in the Council's composition. However, no permanent seat should be allocated to Japan, which, instead of recognizing its guilt and granting reparations to its victims, had been trying for 50 years to justify its past crimes.

70. The reform of the Security Council should be accompanied by greater transparency in the Council's meetings, which must be open to all Member States, with closed negotiations and consultations being limited to procedural questions.

71. Mr. WELBERTS (Germany) endorsed the statement made by the representative of Ireland on behalf of the European Union on the implementation of the provisions of the Charter concerning assistance to third States affected by the application of sanctions under Chapter VII, and on the status of the Repertory of Practice of United Nations Organs and of the Repertoire of the Practice of the Security Council. Concerning the latter issues, Germany was considering the possibility of assigning junior jurists to the Secretariat in order to help it to reduce the backlog relating to the publication of the Repertoire of the Practice of the Security Council. His delegation hoped that such an initiative could be approved by the other Member States.

72. The Legal Counsel's explanation on the status of the Repertory of Practice of United Nations Organs seemed to indicate that even if additional resources were allocated to the Secretariat, they might not necessarily be used to publish the Repertory. That was why, while acknowledging that the question of the Repertory of Practice of United Nations Organs was more difficult to tackle than that of the Repertoire of the Practice of the Security Council, partly because more than one department was involved in the preparation of the former

publication, his delegation appealed to the Secretariat to give it the necessary attention and to consider innovative means for updating it. His delegation was ready to participate in a more detailed discussion with the Legal Counsel on that issue.

73. Concerning the future role of the Special Committee, his delegation favoured neither its abolition nor extensive discussions thereon. Germany was striving to contribute a pragmatic answer to a debate which, in its view, had already taken on too many ideological undertones. In any case, it was premature to consider the abolition of the Special Committee because, while the core issues of the reform process were being discussed in the different working groups established by the General Assembly, it was impossible to predict today which new issues might come up in the future. That was why his delegation endorsed the argument put forward by some delegations in the Special Committee and in the Sixth Committee, that the Special Committee should remain the only body for the discussion of issues related to the Charter after those working groups had been disbanded.

74. That in itself was reason enough for the continued existence of the Special Committee. Nevertheless, the temptation to hunt for issues to submit to it for consideration must be resisted. Besides, the working groups might, in the course of their activities, wish to refer to it questions of a legal nature.

75. As to the future organization of the Special Committee's work, his delegation wished to appeal once again for pragmatism. Indeed, in the current period of financial crisis, it was in the Special Committee's interest to slim down. Without wishing to make the duration of the Special Committee's sessions a point of principle, his delegation continued to favour annual sessions, since biennial sessions would lack regularity and would thus be tantamount to abolition. Nevertheless, the dates and timetable for those sessions should be worked out in accordance with the number of questions to be considered. In other words, his delegation agreed with the view that the Special Committee should be given more time.

76. Mr. PACE (Malta) expressed his delegation's support for the statement on the report of the Special Committee made by the representative of Ireland on behalf of the European Union and associated States. He welcomed the emphasis placed on the practical measures contained in resolution 50/51 on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions and the measures taken recently by the sanctions committees to enhance the transparency of their working methods. The Secretary-General's proposals for follow-up action, including consultations with experts from financial and trade institutions, would surely help to identify the areas in which that assistance could be effectively concentrated and, by consequence, alleviate the impact of sanctions on third States. The importance accorded by the European Union to the assistance programmes was both encouraging and commendable.

77. With regard to the future of the Trusteeship Council, there was a divergence of views between those who advocated its abolition, those in favour of the status quo and those who maintained that the role of the Council should

be reviewed. The issue required reflection, since it affected the institutional balance of the Organization, and whatever decision was taken would have an irreversible effect on the principles which inspired the Organization and by which it should be guided. It was essential, therefore, to reflect upon the consequences and implications of any line of action on the Charter and hence on the Organization and the principles on which it was based. Moreover, ideas, like consensus, needed time to develop.

78. That being the case, his delegation believed that the Sixth Committee should limit itself to noting the parts of the report of the Special Committee dealing with the Trusteeship Council and the wide range of views on that question. Further reflection was required rather than an immediate decision.

79. Mr. RAO (India), speaking on a point of order, asked the Chairman whether consideration of the agenda item concerning measures to eliminate international terrorism could be postponed, since the main document on that question, which should have been issued on 30 September 1996, was still not available to delegations. Of course, the Chairman's decision would not necessarily alter the procedure adopted for the purposes of the discussion. If the current timetable was not revised, it would be difficult for his delegation to examine the document in question in time to be able to comment on the item.

80. The CHAIRMAN said that, while he agreed with the representative of India that there was no need to modify the procedure for discussion of the agenda item, he would wait to see whether the Secretariat was able to issue the document in question within the time initially envisaged before making a decision.

81. Ms. SEMGURUKA (United Republic of Tanzania) noted with satisfaction the consensus among States that sanctions did adversely affect third States and that there was a need to address the issue concretely. The time had come for the Special Committee to focus on a specific mechanism to help those States. However, with regard to the various proposals as to how the problem might best be solved, her delegation could not endorse the suggestion that responsibility for providing that assistance should be shared by various United Nations organs and financial institutions. While not entirely ruling out such an approach, she feared that it might adversely affect the development cooperation which third States, as States Members of the United Nations, were normally entitled to expect from those institutions.

82. Her delegation also noted the proposal to establish a permanent mechanism which would respond rapidly to the needs of third States affected by the application of sanctions and was prepared to consider it further. She commended the efforts being made to consult with those States and expressed the hope that the practice would be strengthened. However, the option of organizing prior consultations and studies of the effects of sanctions before their imposition should be considered with caution in order not to undermine the effectiveness of the sanctions on the targeted State.

83. With regard to the proposal by the Russian Federation on assistance to third States affected by sanctions, some elements, concerning the human aspects

of sanctions and their impact on the civilian population, merited further consideration.

84. As to the future role of the Trusteeship Council, her delegation continued to hold a flexible position and would follow the debate on that question with keen interest.

85. With regard to the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, her delegation noted the difficulties encountered by the Secretariat and hoped that it would continue to do everything within its power to update those documents using the available resources.

86. Her delegation had noted the various proposals made regarding the questions for consideration in the future work of the Special Committee, including the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts submitted by the Russian Federation, and looked forward to examining them in greater detail, as well as the questions concerning the implementation of Articles 31, 44 and 109, paragraph 3, of the Charter and the enhancement of the role of the International Court of Justice, as requested in resolution 50/52, paragraph 4.

87. Lastly, while the fact that during the previous year the special working groups established by the General Assembly had examined in parallel with the Special Committee questions which traditionally fell within its mandate had led some to believe that the Special Committee had outlived its usefulness or that it should meet on a biennial basis and others to conclude that it should consult with those working groups in order to avoid duplication of work, her delegation considered that the Special Committee still had a role to play in the consideration of issues relating to the Charter of the United Nations and that it should, therefore, continue to meet annually.

88. Mrs. EKEMEZIE (Nigeria) said there was no doubt that the activities of the working groups established to consider the reform of the United Nations system had had a considerable impact on the mandate of the Special Committee and were therefore of relevance to it. The Special Committee could not remain a bystander, nor could it be relegated to the background in the efforts to revitalize the United Nations and its organs. Without wishing to undervalue the achievements of the working groups, her delegation considered it necessary to involve the Special Committee in those efforts in order to help the Organization to fulfil its mandate under the Charter regarding the maintenance of international peace and security.

89. With regard to assistance to third States affected by the application of sanctions imposed under Chapter VII of the Charter, it was clear that the status quo was completely unacceptable and that there was a need to create a kind of permanent mechanism able to respond to the needs and requests of States suffering the effects of such sanctions. Far from being a punitive measure, sanctions were intended, in principle, to modify the behaviour of target States and should therefore be used sparingly when they were necessary. In that

connection, her delegation urged that the recommendations of the Secretary-General on that question be given further consideration. While resolution 50/51 was a good start, it was in no way a panacea.

90. Lastly, her delegation hoped that the Special Committee would be able, in its next session, to consider some of the proposals on its agenda concerning the maintenance of international peace and security and the peaceful settlement of disputes between States.

The meeting rose at 5.25 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
9th meeting
held on
Tuesday, 1 October 1996
at 3 p.m.
New York

SUMMARY RECORD OF THE 9th MEETING

Chairman: Mr. ESCOVAR-SALOM (Venezuela)

CONTENTS

AGENDA ITEM 120: HUMAN RESOURCES MANAGEMENT (continued)

AGENDA ITEM 152: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.9
10 December 1996
ENGLISH
ORIGINAL: FRENCH

96-81258 (E)

The meeting was called to order at 3.10 p.m.

AGENDA ITEM 120: HUMAN RESOURCES MANAGEMENT (continued)

Reform of the internal system of justice in the United Nations Secretariat (continued) (A/50/7/Add.8, A/49/60/Add.2 and Corr.1, A/C.5/50/2 and Add.1 and 2)

1. Mr. HAYES (Ireland), speaking on behalf of the European Union, explained what he thought would be the most suitable structure for dealing with differences between the United Nations Administration and staff. The system should provide for procedures in a non-contentious stage and for the subsequent resort to a judicial process if those procedures were unsuccessful. At the first stage, due attention should be given to the possibilities offered by mediation and ombudsman procedures, but without excluding a review function. Since there were two categories of differences between Administration and staff, arising respectively from administrative decisions and disciplinary measures, there should also be, in regard to the latter, established pre-decision consultation procedures quite distinct from post-decision mediation and review procedures. The next stage, that of resort to a judicial process, should be on the lines of the existing appeal procedure to the Administrative Tribunal.

2. His delegation wished to offer some comments on a few aspects of the Secretary-General's proposals. The European Union welcomed the proposal to replace the existing panels on discrimination and other grievances with ombudsman panels. The Coordinator would have the responsibility of ensuring that the panel system functioned properly and the task of organizing, training and guiding the panels. Those changes would improve the procedure and produce better results. The members of the ombudsman panels should have direct experience of the work of the United Nations and enjoy the confidence of both the Administration and the staff.

3. His delegation believed it important for reasons of due process that staff members should be able to choose between reference to an ombudsman panel or having recourse immediately to the pre-litigation review procedure. That procedure, which was currently provided for under staff rule 111.2, was also intended to be strengthened.

4. The European Union had serious doubts regarding the proposal to replace Joint Appeals Boards by Arbitration Boards. Its principal concern was that it would involve replacement of staff members by outside experts. The latter would lack familiarity with the very special regime appropriate to the United Nations. Their approach, which might be appropriate in the private sector, could be unsuitable for the Secretariat.

5. The European Union also had doubts about the appropriateness of arbitration as a method of settling disputes between institutions and staff members. The principle of binding arbitration at that stage, even if only by mutual agreement, would seem to be a derogation of the responsibility which, under the Charter, the Secretary-General bore for the administration of the Secretariat.

6. In addition, the European Union noted that the Administrative Tribunal itself had expressed reservations on a number of aspects of the reform, for example the independence of the arbitrators. In any case, the method of selection of appointees to any new offices should enjoy the confidence of both the Administration and the staff.

7. The Secretary-General's reports presented widely divergent views on the quality of Joint Appeals Board decisions and the value of their contribution to the system of administering justice in the United Nations. The European Union had concluded that further research was required taking into account the qualitative and quantitative impact of the work of the Joint Appeals Boards before an authoritative assessment could be made.

8. The Advisory Committee on Administrative and Budgetary Questions had itself expressed concern that not enough had been done to respond to its calls for simplification of rules and procedures. Lastly, any reform of the procedure should take account of the existence of the different United Nations seats around the world.

9. Mr. LEGAL (France) said that the replies provided by the Under-Secretary-General for Administration and Management to the questions asked by members of the Sixth Committee had been inadequate to say the least. The questions which his delegation had asked had received very patchy answers, and the same held true for the questions asked by the delegation of the Syrian Arab Republic. The Sixth Committee was not alone in receiving such treatment: the replies by the Under-Secretary-General to other Committees had been just as unsatisfactory. In considering matters of that kind, it was vital that the General Assembly should receive the answers it needed. It was essential to listen to the views of Member States when institutional reform was being discussed. To date, States Members had not been given a proper hearing, and unless they were listened to and their views taken into account, it would be impossible to break the deadlock. While grateful to the Under-Secretary-General for his statement the previous day (A/C.6/51/SR.8), his delegation wished to hear from the President of the Administrative Tribunal when that body began sitting. The Tribunal had made some important proposals on the matter under discussion and it would be useful for the sake of balance if the Sixth Committee could benefit from its deliberations.

10. His delegation wholeheartedly supported the comments made by the representative of Ireland on behalf of the European Union. Regarding the juridical implications of the proposals contained in the Secretary-General's reports on reform of the internal system of justice in the Secretariat (A/C.5/50/2 and Add.1 and 2), his delegation wished to highlight certain comments and submit alternative proposals.

11. The first of his comments related to "professionalization of the justice system". The report submitted by the Under-Secretary-General for Administration and Management took as its starting point the lack of competence and availability of staff-elected members of the Joint Appeals Board and proposed replacing that body with one composed solely of "professionals skilled in ascertaining relevant facts and supporting evidence". By the same reasoning, the report proposed that staff representatives should no longer be elected but

chosen by the Secretary-General from a list drawn up by the staff representative body, since an election would be a cumbersome and impractical procedure.

12. The analysis on which the proposal was based essentially blamed the joint composition of appeals and disciplinary bodies and the practice of electing staff representatives to serve on them for the delays and ineffectiveness it noted in the current system. The French delegation challenged the validity of that analysis.

13. In fact, staff participation in disciplinary and appeals bodies guaranteed that the viewpoint of staff on situations potentially affecting their lives and careers would be considered before the Administration took a final decision. That participation was also necessary to the United Nations, because it ensured cohesiveness among the persons composing the Organization and the accountability of staff who were thereby given the right to state their views. The ability of joint appeals boards to recommend changes to the Staff Rules was important in that regard.

14. The report (A/C.5/50/2) emphasized the staff's lack of interest in performing elective functions in joint advisory bodies. That situation was perfectly understandable because, currently, staff members who made the effort to represent their colleagues had to volunteer their time, ask their supervisor for permission to attend meetings and consider and prepare their case files without being released from any of their regular duties. In addition, the obligation of accountability meant that such staff members were even penalized for exercising those functions. The situation would certainly be different if the exercise of elective functions was protected by the Staff Regulations and Rules and if the usefulness of those functions was officially acknowledged.

15. The accusation that staff members serving on joint bodies were incompetent was particularly shocking because, in many cases, the excessive delays in the processing of cases seemed, on the contrary, to be attributable to postponements requested by the Administration itself.

16. The claim that elected staff representatives systematically sided with the staff member concerned disregarded the logic of the operation of a joint body, whereby the members appointed by the Administration defended the interests of the relevant service, and the elected members defended the collective material and non-material interests of the staff they represented. The board or committee members could not act as impartial judges of the cases brought before them because that was not their role and the body on which they served was not a tribunal.

17. The recommended solution of recruiting "professionals" seemed completely inappropriate. The objective of the advisory system was to give the Secretary-General a full account, from each party's viewpoint, of the circumstances of the dispute and to assess the impact of his final decision in terms of the interests of the service and of Secretariat staff. A theoretical and abstract view advanced by "experts" with no particular link to either management or staff would not help the Secretary-General to weigh the factors at stake in order to make his choice. Familiarity with the specific features of the Organization was

precisely what was needed in order to form a viable recommendation, and it was paradoxical to turn to outsiders as a means of reaching that outcome.

18. It should also be noted that resorting to 'professionals' entailed a risk of amateurism or patronage. If the persons recruited served for short periods, their lack of sufficient knowledge of the context would render their initial contributions questionable, if not meaningless. If, on the other hand, they remained for long periods, there was a danger that their complete independence from the Administration or from a given staff member could eventually be compromised. In either case, they would no longer enjoy the full confidence of the Secretary-General, and the exercise would probably fail.

19. Professional members of advisory bodies would have to be chosen in accordance with the principles of geographical representation and equitable representation of the major systems of civil service organization and administrative justice. Whether that choice was made through elections by the General Assembly or directly by the Secretary-General, serious practical difficulties could arise in reconciling the need for diversity with the imperatives of quality, homogeneity and economy, since the number of persons to be selected was very small.

20. He also wished to comment on the use of arbitration to settle internal disputes. The second main point of the Under-Secretary-General's statement was that arbitration (and even binding arbitration) should replace the current methods of using joint consultations to deal with appeals lodged by staff. That idea, together with that of recruiting professional arbitrators, was manifestly imported from a context which was very different from that of the United Nations, and did not seem very appropriate.

21. Arbitration presumed the existence of a relation of equality between the parties who chose that means of settlement. It also presumed that the parties had agreed in advance that the arbitral award would be binding for both of them. First, however, the staff and the Secretary-General were not on an equal footing in the employment relationship; and second, the binding nature of the award would pose problems of compatibility with the Charter.

22. Arbitration, as used in the private sector, could not be transposed to a civil service system in which the rules governing personnel management were determined by a third party: the General Assembly. In that context, disputes concerned only the Secretary-General's application of pre-existing rules. Therefore, the object was not to find a middle ground between two free agents, but rather to find a satisfactory interpretation of a given legal framework. In that respect, the Administration was better equipped than staff members and their representatives, and arbitration was likely to be a bad bargain for the staff members concerned.

23. Moreover, the logic of arbitration was ill-suited to the unilateral nature of the relationship between a supervisor and his or her staff. The supervisor - meaning, first of all, the Secretary-General in his capacity as the 'chief administrative officer of the Organization' - was responsible for personnel management and accountable to Member States in that regard. If the Secretary-General was no longer accountable for decisions on important issues concerning

the application of administrative rules, Member States would lose their authority over an organ which was supposed to put their decisions into practice. Binding arbitration would require all parties to abide by management solutions which had been formulated and adopted by persons who were not legally accountable. The French delegation felt that that option could not be considered unless the decisions in question were taken by a judicial body, and the United Nations Administrative Tribunal was the only one which had competence in the matter.

24. The proposal contained in the report (A/C.5/50/2) did not require that arbitration should be binding in all cases. However, if it was not, then the proposal concerned mediation rather than true arbitration, and the logic of the system was such that arbitrators' decisions progressively became binding.

25. The proposal to replace the joint advisory machinery by professional arbitrators amounted purely and simply to abolishing the advisory system rather than improving it. It was, however, possible to find ways of introducing reforms which maintained the distinction between the advisory and judicial functions. For that reason, the Secretariat and Member States should consider an approach fundamentally different from that proposed by the Secretary-General in order, on the one hand, to strengthen the advisory system and to facilitate staff participation in joint bodies and, on the other, to reinforce the authority of the Administrative Tribunal and assert the rights of the staff members concerned to which such authority gave rise.

26. Strengthening the advisory system implied, in the first place, modifying the terms of service of the staff members concerned, specifically by granting time off for attendance at, and preparation for, meetings, organizing training sessions during working hours in administrative law and other techniques relevant to participation in joint meetings, protecting those concerned from any impact on their career as a result of time spent on the tasks involved in staff representation or the positions adopted in that context, providing facilities for widely publicizing the holding of elections and enhancing the status of advisory activities, which should systematically be viewed not as time lost for programme delivery but as an important part of programme implementation.

27. Staff consultation was already obligatory in disciplinary cases. It might also be contemplated in the case of individual or collective decisions concerning, for example, transfers, remuneration and proposed amendments to legislation.

28. Staff rights might also be more effectively ensured if the judgements of the Administrative Tribunal were more binding on the Administration than they were currently. The removal of the option of consulting the International Court of Justice concerning Administrative Tribunal decisions, had, in fact, made those decisions the final stage of contentious proceedings. For that reason, the nature of the Tribunal's full jurisdiction should be reaffirmed and, at the same time, more specific requirements should be laid down concerning the qualifications of the judges. The powers of the Tribunal might be defined in more peremptory terms. It would be in a better position to fulfil its jurisprudential and judicial role if it were open to it both to award compensation for injury and, above all, to rescind the acts of which it was

seized. Retroactive rescission, a tried and tested method of administrative law, was a means of eliminating acts declared to be illegal from the legal order. The exercise of such a power would have the effect of ensuring the rule of law at all times within the Secretariat, which was not currently the case.

29. Lastly, it would be appropriate to develop procedures that would oblige the Administration to comply fully with the judicial decisions rendered by the Administrative Tribunal. For example, in a case where a decision in irregular form had been taken to the detriment of a staff member, the latter should have the benefit, through retroactive rescission, of a proper reconstruction of his career, nullifying the effects of the illegality of which he had been the victim. Other procedures, such as financial penalties, might be added to the means at the disposal of the Tribunal to ensure compliance with its decisions, which would be in the interest of all and would limit the number of cases of illegality.

30. Rather than creating parasitical structures with extensive powers within the administrative machinery, it would be possible to keep the hierarchical authority intact by enabling it, at an early stage, to pay more attention to staff concerns, and, at a later stage, to make it subject to more effective judicial review.

31. His delegation considered that failure to reconsider the Secretary-General's proposals and so avoid becoming trapped in the straightjacket of simplistic arrangements, would be unacceptable and self-defeating. It was willing to consider improved proposals with other delegations and was ready to participate in any consultations which the Secretary-General might initiate in order to develop a new proposal.

32. Ms. KUNADI (India) recalled that under the reform of the internal system of justice proposed in document A/C.5/50/2, the Joint Appeals Board would be replaced by an Arbitration Board and the Joint Disciplinary Committee by a Disciplinary Board. The arbitrators would be professional people recruited from outside the United Nations system and would not be regarded as staff members.

33. Her delegation was in favour of a meaningful reform of the internal system of justice. He would have no objection to the use of the proposed arbitration procedure to settle commercial disputes that might arise between the Organization and outside contractors. Similarly, it would be in favour of the professionalization of the system as proposed by the Secretary-General. However, it had reservations on the appropriateness of arbitration as a means of resolving administrative disputes.

34. Arbitration generally implied a situation of equality between the parties, who freely chose that means of settlement, appointing arbitrators, agreeing on the applicable law and other arbitration procedures. However, the legal system provided in the Charter did not place the parties on an equal footing, nor did it leave them free to appoint judges or to decide on the applicable law; moreover, it was for the Secretary-General, in his capacity as the chief administrative officer of the Organization, to decide all matters of a disciplinary nature.

35. Her delegation therefore considered that the proposal to establish a system of arbitration within the internal system of justice did not satisfy the criteria of equity and justice. It remained ready, however, to consider any proposal that might be submitted to improve the existing system.

36. Mrs. FERNANDEZ de GURMENDI (Argentina) considered that the Secretary-General's proposal contained many positive features, in particular with respect to improving communication, the exchange of information, reconciliation, the training of administrators and the creation of ombudsmen mediation panels.

37. The outside recruitment of arbitrators who would replace the Joint Appeals Board and would preside over the Disciplinary Boards appeared to raise a series of problems that called for the greatest caution. Arbitration hardly seemed appropriate for the settlement of administrative disputes in the international civil service where the parties were not on an equal footing but, because of the very nature of the link between them, in a hierarchical relationship. Moreover, the fact that the Secretary-General and the staff would not be able to appoint the arbitrators by joint agreement ran counter to one of the essential objectives of the reform, which was to introduce transparency and avoid conflicts of interest. The proposed method of appointment would not necessarily have implications with respect to the professional competence of the arbitrators, but it would undoubtedly have an impact on the way in which the impartiality of the system was perceived. Moreover, the possibility of negotiation and settlement that was afforded by arbitration in situations where the parties were equal would be absent in the context of the international civil service, since the Secretary-General and the staff were bound strictly to observe the regulations in force, a fact which left very little room for manoeuvre through negotiation.

38. The proposal to create two Arbitration Boards (one in New York and the other in Geneva) which would replace the various joint boards also raised questions of a practical and financial nature. More accurate data would be required in order to ascertain whether the centralization of the system would make it possible to eliminate the backlog, and to determine the cost of such a reform.

39. The professionalization of the internal system of justice implied a radical reform with respect both to the philosophy of the system and to practicalities. All Member States should therefore reflect on the matter and closer consultations should be arranged between the principal parties concerned.

40. Mrs. CUETO MILIÁN (Cuba) said that even though the reforms envisaged would have financial implications, they were indispensable. The internal system of justice must be simplified so that staff members could more easily become acquainted with and exercise their rights.

41. The Secretary-General's proposals for mediation and the early resolution of conflicts were both timely and justified. The establishment of ombudsman panels to deal with claims and grievances made through informal channels would be a practical solution. However, the mechanism for the review of administrative decisions must also be strengthened.

42. The proposal to establish an arbitration board to replace the Joint Appeals Board was less convincing. It must be analysed very carefully because the first issue was to determine whether the Secretariat was suited to a procedure of that nature. If the reform continued anyway and the new board was actually established, strict statutory rules must be laid down and changes must be made to the Staff Rules, along with consequential changes to the Staff Regulations. The documents submitted did not make it possible to determine whether it was worth establishing the proposed arbitration board.

43. Her Government also had doubts about the enforceability of arbitral awards on the parties to a dispute. There could be conflicts of jurisdiction and attribution of competence. The General Assembly, under the Charter, was competent to provide guidelines to the Secretariat. The Secretary-General had clearly identified responsibilities in respect of his relations with the staff. Consideration should also be given to the proposal to establish optional binding arbitration for disputes which related only to factual issues or small claims. In general, the documents submitted on the item were not sufficient to justify the proposal.

44. In conclusion, her Government felt that if reforms were to be made, they must be carried out gradually. It was not possible to implement all the proposals at once, and to pay no attention to their financial implications.

45. Mrs. FLORES (Mexico) said that when the General Assembly had decided, in resolution 50/54, to delete article 11 of the statute of the United Nations Administrative Tribunal and thus make the Tribunal's judgements final and not subject to appeal, it had stressed the importance for the Organization of ensuring a fair, efficient and expeditious internal system of justice. The reports under consideration gave the impression that the current system was complex, slow and, in general, frustrating for the Secretariat and for the staff. Mexico felt that the system must be reformed.

46. The Secretariat was proposing a new structure based on the early resolution of disputes and the professionalization of the judicial bodies. Those were two plausible solutions. However, the system must be not only equitable and effective, but also simple, expeditious, impartial, independent and reliable for the parties concerned.

47. The Secretariat's proposal appeared to be going in that direction, but the proposed system could be further improved in order to correspond more closely to the objectives sought. For example, the staff could participate more in the choice of the members of the Disciplinary Board, the arbitrators and the mediators, professional legal aid could be provided, the Disciplinary Board and the Arbitration Board could be chaired by different people, and not by the same person as was being proposed, and the parties could undertake in good faith and without reservation to implement the decisions taken by the arbitrators or by the Administrative Tribunal.

48. Ms. WONG (New Zealand) said that the weaknesses of the current system - delays, encumbrances, absence of guarantees as to staff representation - were well known. It was for that reason that New Zealand welcomed the Secretary-General's proposals regarding the formation of ombudsman mediation panels, the

establishment of a small claims court and the appointment of a Legal Officer to the Panel of Counsel. However, the proposed replacement of the Joint Appeals Board by an Arbitration Board raised a number of questions, particularly as to the independence of the arbitrators and the modalities of their selection.

49. The possibility of submitting appeals to the Administrative Tribunal seemed sufficient. The Secretary-General should launch a broad consultation process in order to find solutions that were acceptable to all concerned, in particular the staff.

50. Mr. HOLMES (Canada) said that the ideas put forward by the Secretary-General in the reports under consideration were innovative in nature. In particular, he welcomed the proposals for the training of staff, the creation of ombudsmen panels and the strengthening of the Administrative Review Unit, which would encourage alternative means to resolve disputes. Like the Advisory Committee on Administrative and Budgetary Questions, Canada supported the implementation of measures aimed at resolving disputes before they reached the stage of litigation. That would make the internal system of justice faster and more efficient.

51. The proposals for the creation of new arbitration and discipline boards required more careful attention. Several delegations had raised questions about the legal aspects, which should be carefully reflected upon. For that reason, Canada, like the Advisory Committee, felt that the implementation of the proposals should be delayed.

52. Mr. POSADAS MONTERO (First Vice-President of the Administrative Tribunal) said that at the eighth meeting the representative of the Secretary-General had made criticisms relating to three aspects of the internal system of justice in the Secretariat: slowness of procedures, lack of professionalism of the bodies of the first instance and difficulty of recruiting competent staff for the Joint Appeals Board. He would respond to those criticisms.

53. With regard to delays, the Tribunal was aware of them. It felt, however, that they were not exclusively attributable to the Joint Appeals Board, but resulted also from the delaying tactics frequently resorted to by the Administration in relation to appeals.

54. On the alleged lack of professionalism of the Joint Appeals Board, in 90 per cent of the cases its work was serious, in-depth and dedicated. Cases of negligence and incompetence were very rare, and the fact that the Joint Appeals Board did not consist of professionals had very little impact on the work of the Tribunal.

55. As to the difficulty to assigning qualified staff to the joint bodies, the Tribunal could not respond because it lacked the necessary experience and information.

56. The Tribunal's views on the other elements of the proposals under consideration were contained in the two documents circulated to delegations. The proposals would involve a profound transformation of the internal justice system. The replacement of the Joint Appeals Board by an Arbitration Board

would in fact completely alter the method for the settlement of disputes. Arbitration consisted of bringing the parties together to negotiate so that an agreement emerged. The present system, in contrast, was designed to determine whether the Administration was acting in accordance with the rules and, when that was not the case, to produce a recommendation to the Secretary-General. Thus, the Joint Appeals Board helped to ensure the legality of the Administration's decisions, a very different matter from reconciling the parties to a dispute.

57. In the documents, the Tribunal also indicated its doubts about the new Arbitration Board, doubts which the Member States had themselves raised. Some other points warranted attention. In several instances the cases before the Tribunal were not considered first by the Joint Appeals Board but reached it by other means. Would such means of private recourse, concerning amongst other matters pensions, staff retirements and post reclassifications, be kept in place after the establishment of the Arbitration Board? It might also be wondered whether arbitration would be used in disputes about staff members' periodic reports, which were not at present considered by the Joint Appeals Board.

58. Lastly, he wished to make some comments about the composition of the proposed Arbitration Board. The qualifications required for membership were much higher and more specialized than those required for membership of the Administrative Tribunal; that was illogical since the Tribunal was an appeals body. The brevity of the term of office of the arbitrators was also a source of concern. It might lead to inconsistency of rulings.

59. Mr. ZACKLIN (Office of Legal Affairs) said that he wished to reply to the question put to the Under-Secretary-General for Administration and Management at the Committee's eighth meeting (A/C.6/51/SR.8) concerning the various options which the Secretary-General had considered before submitting his proposals for reform of the internal system of justice in the Secretariat.

60. The first option was to leave the existing system of Joint Appeals Board/ Joint Disciplinary Committee in place but with minor adjustments. That approach had been used in 1987-1988 but had not proved satisfactory. The second option had been the phased approach proposed by the Tribunal in its initial comments (A/C.5/49/60/Add.2, paras. 12 and 13), under which the Secretary-General would enhance training activities, introduce the ombudsman mediation system and make a substantive review of all administrative decisions. The third option had been a semi-professional joint appeals board composed of staff members, with an external chairman. That had precluded the possibility of binding arbitration. The option would have been difficult to implement because of the problem of finding staff to serve on a part-time basis.

61. The fourth option had been to introduce binding arbitration in every case. That radical approach had been rejected in favour of a voluntary system under which both parties would have to agree to such arbitration, except in the case of disciplinary matters. When the system had been operating for two years, binding arbitration would have been introduced for certain clearly defined cases, as explained in paragraph 32 of document A/C.5/50/2.

62. The last option had been to replace the Joint Disciplinary Committee by a disciplinary board composed of qualified outside professionals, along the lines proposed for the Arbitration Board. That option had not been adopted for the reasons given in paragraph 56 of the document, including the fact that disciplinary matters were better understood by the peers of the staff member in question.

63. The CHAIRMAN said that the Committee had thus concluded its exchange of views on item 120.

AGENDA ITEM 152: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER

64. The CHAIRMAN recalled that a Working Group on the principles and norms of international law relating to the new international economic order had been created by General Assembly resolution 46/52 and that the item under consideration had been included in the agenda of the fifty-first session in accordance with resolution 48/412.

65. Ms. CUETO MILIÁN (Cuba) first outlined some of the background of the item and then recalled the concerns of some delegations which thought that the term "new international economic order" was now out-of-date. There was no reason why the Committee should not change that language since, far from having witnessed the advent of a new international economic order, the world was suffering a genuine international economic disorder.

66. Since the question of the progressive development of the principles and norms of international law relating to the new international economic order was not on the agenda of any other committee of the General Assembly, its retention on the agenda of the Sixth Committee would not involve any duplication of effort. The costs would not be very great, even in the context of the present financial crisis. Moreover, in view of the link between peace and development it was not only the developing countries but the whole international community which would benefit from a new order guaranteeing its security.

67. The Secretary-General himself had stated recently at the Ministerial Meeting of the Group of 77, held at Headquarters on 27 September, that development was one of the Organization's main objectives, which must be viewed from a new angle and with a new perspective of collaboration. He had also emphasized the role which the Organization had to play in the follow-up of the decisions of the high-level international conferences on development and international economic relations.

68. Those were in fact the reasons why Cuba thought that the item should be kept on the Committee's agenda and that the Working Group created by resolution 46/52 should be reactivated. The Group could continue to monitor the results of the international conferences on development, including the Rio Summit. The Committee could also continue to monitor the work of UNCTAD and ITC. In that connection, in resolution 46/52 the General Assembly had requested the Secretary-General to seek the opinions of Member States and the competent international organizations concerning the principles and norms of international law relating to the new international economic order.

69. Cuba therefore proposed that the Secretary-General should submit to the Committee, at the fifty-third session, a report containing the views of Member States and international organizations. Those organizations made a very useful contribution to the codification and progressive development of international law which should be taken into account.

70. The CHAIRMAN said that the Bureau would consider the proposals made by the representative of Cuba.

The meeting rose at 5.10 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
10th meeting
held on
Thursday, 3 October 1996
at 10 a.m.
New York

SUMMARY RECORD OF THE 10th MEETING

Chairman:	Mr. ESCOVAR SALOM	(Venezuela)
later:	Mr. MAZILU (Vice-Chairman)	(Romania)
later:	Mr. ESCOVAR SALOM (Chairman)	(Venezuela)

CONTENTS

AGENDA ITEM 151: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.10
12 November 1996

ORIGINAL: ENGLISH

96-81264 (E)

The meeting was called to order at 10.05 a.m.

AGENDA ITEM 151: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (A/51/70-S/1996/115, A/51/74-S/1996/163, A/51/84-S/1996/211, A/51/87, A/51/208-S/1996/543, A/51/210, A/51/216-S/1996/563, A/51/261, A/51/284, A/51/336, A/51/374, A/51/397-S/1996/767)

1. Ms. WILLSON (United States of America) said that in 1995, acts of international terrorism had taken place in 51 countries and had continued to threaten civil society and peace processes. In addition to causing political and psychological damage, terrorism had high economic costs in terms of the money spent to guard against it and its discouragement of foreign investment and tourism in the countries affected. Technological developments had aided terrorists, who benefited from modern communications and transportation, global sources of funding, computers and the mass media's unwitting assistance in spreading images of terror, but those developments had also aided law enforcement officers in tracking and arresting terrorists.

2. Through its Anti-terrorism Assistance Program, the United States Department of State's Bureau of Diplomatic Security had trained over 18,000 foreign government officials from over 80 countries in counter-terrorism techniques and aviation security. In April 1996, the Organization of American States had adopted the Declaration of Lima to Prevent, Combat and Eliminate Terrorism. The report of the Secretary-General (A/51/336) provided valuable information that would help to enhance international cooperation to fight terrorism, including the table on participation in international conventions pertaining to international terrorism. She hoped that delegations would revive the practice of approaching States which were not parties to those conventions to encourage them to ratify or accede to them.

3. Since most terrorist acts involved the use of bombs or other incendiary or lethal devices, the United States had proposed the elaboration of an international convention for the suppression of terrorist bombings. At the Ministerial Conference on Terrorism, held in Paris in July 1996, the Group of Seven and the Russian Federation had endorsed that proposal, as well as the Russian Federation's proposal to elaborate a convention on cooperation in combating acts of nuclear terrorism, and she hoped that the General Assembly would establish an intersessional ad hoc committee to prepare those instruments.

4. The participants in the Ministerial Conference had also adopted 25 measures to prevent terrorism and strengthen international cooperation to fight it, and had invited all States to adopt those measures to impart greater efficiency and coherence to their efforts and to facilitate practical cooperation. The kidnapping of six people in Kashmir the previous year, and the brutal murder of one of them, served as a tragic reminder of the obligation of all countries to work together to eliminate international terrorism.

5. Mr. Mazilu (Romania), Vice-Chairman, took the Chair.

6. Mr. ABDELLAH (Tunisia) said that his country welcomed the adoption, at the Ministerial Conference on Terrorism, of the 25 measures to prevent terrorist

activity enumerated in document A/51/261, especially those concerning fund-raising by terrorists and the exchange of information; he hoped that the General Assembly would also adopt such measures. His country had always stressed that the humanitarian institution of political asylum must not serve to benefit those who funded, organized, committed or advocated terrorism. The Convention relating to the Status of Refugees, the Declaration on Territorial Asylum and the Declaration on Measures to Eliminate International Terrorism clearly established the obligation of States to see that political asylum was not misused, and any State which granted protection to persons who had been prosecuted in their country of origin for terrorist acts violated that obligation.

7. He supported the United States proposal on an international convention for the suppression of terrorist bombings, as well as Poland's proposal on an international convention against transnational organized crime. Tunisia had participated in all regional initiatives concerning the issue. At the international level, it advocated the adoption of a single, legally binding instrument which would cover all aspects of terrorism and would approach the individual criminal responsibility of terrorists on the basis of the principle of aut dedere aut judicare.

8. The United Nations was the most appropriate forum for promoting cooperation in combating terrorism. In that connection, he hoped that the Sixth Committee would reactivate the Ad Hoc Committee on International Terrorism, which should be open to all Member States. The Organization's efforts must be underpinned by a firm political will to implement all anti-terrorism measures to the fullest extent possible, in order to safeguard the security, stability and economic and social development of all peoples.

9. Mr. OWADA (Japan) said that the relief and optimism generated by the end of the cold war were increasingly being eroded by the growing threat of terrorism. In recent years the world had witnessed a spate of terrorist bombings, explosions and other lethal acts. The United Nations was the most appropriate and effective forum for international cooperation to combat terrorist violence. A number of multilateral conventions on the subject were already in force, including the Declaration on Measures to Eliminate International Terrorism, adopted by the General Assembly in 1994.

10. The seriousness of the problem had been underscored by the decision taken at the Group of Seven Summit, held at Lyon in June 1996 to give absolute priority to the fight against terrorism. To that end, the Group of Seven and the Russian Federation had convened the Ministerial Conference on Terrorism, held in Paris in July 1996. The final document issued by the Conference (A/51/261) listed 25 concrete measures to be adopted by States with a view to enhancing the efficiency and coherence of the fight against terrorism.

11. A draft resolution was currently being prepared by some of the countries which had participated in the Conference, calling on all States to adopt those measures and to strengthen international cooperation in the fight against terrorism. His delegation expressed its sincere appreciation to the French delegation for preparing the draft, of which Japan was considering becoming a sponsor. In order to be truly effective, the 25 measures must be implemented by

all Member States. His delegation hoped that the Committee would adopt the draft resolution by consensus as a decisive step towards achieving that goal.

12. In its efforts to combat international terrorism, the international community must guard against those who used their refugee status as a pretext for engaging in terrorist acts. His country, while second to none in its respect for the norms of international law and for human rights relating to political asylum and the status of refugees, firmly believed that such a status must not be used in a manner contrary to the purposes for which it had been instituted. For that reason, his delegation welcomed the United Kingdom proposal, and hoped that it would become a useful addition to the anti-terrorist arsenal.

13. There had recently been an alarming increase in the terrorist use of powerful explosives which took a heavy toll in innocent human lives. It was imperative to strengthen international cooperation to prevent such acts. Among the measures recommended by the Ministerial Conference on Terrorism was the preparation of an international convention on terrorist bombings, an area not covered by the existing multilateral conventions. Japan was prepared to work closely with other like-minded States in drafting such an instrument.

14. Mr. HAYES (Ireland), speaking on behalf of the European Union and Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Lithuania, Malta, Poland, Romania and Slovakia, said that he strongly supported the General Assembly's 1994 Declaration on Measures to Eliminate International Terrorism and that the strict implementation, by all States, of the principles laid down therein would represent a significant step towards the elimination of terrorism.

15. The Maastricht Treaty provided the framework for cooperation among the member States of the European Union in fighting terrorism. More recently, the Ministers for Foreign Affairs of those States had issued the Palermo Declaration on the subject, and member States had participated in a number of international initiatives. In particular, he drew attention to the 25 anti-terrorism recommendations, which were directed to all countries, in the document issued at the Ministerial Conference on Terrorism. Moreover, the United Kingdom intended to introduce in the Committee a draft declaration to strengthen the implementation of the General Assembly's Declaration; the European Union hoped that all delegations would give it serious consideration.

16. Although the report of the Secretary-General (A/51/336) indicated that the number of acts of unlawful interference with civil aviation had declined between 1994 and 1995, the number of terrorist incidents remained high and should prompt intensified international efforts to combat terrorism. He expressed sympathy to the victims of terrorist violence and their families, and said that efforts to obtain the release of the individuals kidnapped in Kashmir the previous year and to bring the perpetrators to justice would be continued.

17. The effectiveness of efforts against terrorism would be strengthened by wider participation in the principal international conventions on the issue. No single nation or group of nations could win the battle against terrorism on its own. His delegation pledged its unremitting support for international

cooperation at all levels to rid the world of terrorism, which was one of the scourges of the late twentieth century.

18. Ms. WILMSHURST (United Kingdom), after expressing her delegation's support for the statement made by the representative of Ireland on behalf of the European Union, introduced a draft proposal entitled "Further declaration in implementation of the 1994 Declaration on Measures to Eliminate International Terrorism", which the United Kingdom hoped would be adopted by the General Assembly at the current session. The draft declaration was a new practical measures designed to combat the misuse of the right to political asylum and refugee status for terrorist purposes.

19. The proposal had two main aims. The first was to make it clear that those who financed, planned and incited terrorist deeds were acting contrary to the purposes and principles of the United Nations and therefore could not claim protection under the 1951 Convention relating to the Status of Refugees. While the draft declaration would not have the effect of amending the Refugee Convention, it might be relevant to the interpretation of the Convention. In her country, for example, the courts would be able to take the new declaration into account in interpreting the Government's responsibilities under the Convention.

20. Other provisions of the Refugee Convention, such as articles 32 and 33, allowed States to expel a refugee in cases where the refugee was a threat to national security or public order or where the refugee had been convicted of a particularly serious crime and thus constituted a danger to the community. Those articles, however, applied to persons who had already been granted refugee status. In the United Kingdom currently, once a person had claimed asylum, he or she might be entitled to remain in the country until the claim had been determined and legal appeals had been exhausted, a process that could take years. The purpose of the draft declaration was to emphasize that the process of seeking asylum might not be available to those participating in or actively supporting terrorism.

21. The draft proposal was closely related to the Declaration on Measures to Eliminate International Terrorism adopted by the General Assembly in resolution 49/60. Her delegation's initiative should not be construed as making an unwarranted link between refugees and terrorism or as in any way weakening the protection afforded by the Refugee Convention. The United Kingdom had a long and proud tradition of granting asylum to persons fleeing persecution and complied fully with its obligations under the 1951 Convention.

22. The situation that the draft declaration was intended to address was one in which individuals escaped from one State and established themselves in another State in order to plan, fund or incite terrorist acts to be carried out in their home State or elsewhere. Thus, paragraph 3 provided that States must also take their own measures to ensure that refugees in their territory did not prepare or organize terrorist acts abroad. In that connection, her Government had recently undertaken a study of its criminal-law provisions in the light of proposals to extend the jurisdiction of the courts to cover acts of conspiracy and incitement in the United Kingdom aimed at the perpetration of serious offences in other countries.

23. The proposal's second aim was to encourage further cooperation among States in bringing terrorists to justice. In that connection, she drew attention to paragraph 5, which encouraged States, when they concluded extradition arrangements, to consider limiting the political offence exception in its application to terrorist acts.

24. The last paragraph of the draft urged States to become parties to various anti-terrorist conventions. Paragraph 34 of the Secretary-General's report (A/51/336) pointed out that many of the agreements already in force were still far from being universal and that quite a number of countries were not parties to any of them. Her delegation hoped that, at the current session, the General Assembly would issue an appeal to States to become parties to the existing instruments.

25. The draft declaration would, if approved by Member States, need to be adopted by means of a General Assembly resolution. Her delegation was prepared to work constructively with other delegations on the wording of the covering resolution.

26. Mr. PEDRAZA (Bolivia), speaking on behalf of the Rio Group, said that international terrorism was a serious and disturbing phenomenon which affected all peoples without distinction, and thus required concerted international action to eradicate it. Under no circumstances could any social, political or economic goal justify the killing of innocent human beings. Such criminal acts could endanger international peace and security and relations between States. The countries members of the Rio Group also expressed their deep concern at the links between terrorism and other criminal acts, such as drug trafficking and the illegal arms trade.

27. Important steps had been taken at the international level to strengthen the legal framework of the fight against terrorism. The Declaration on Measures to Eliminate International Terrorism adopted by the General Assembly in its resolution 49/60 was an especially significant development which laid the groundwork for intensified efforts to combat terrorism. The Rio Group reaffirmed its support for the Declaration and its readiness to join in efforts to promote further measures to combat and eliminate international terrorism.

28. Significant progress had also been made at the regional and subregional levels. The Inter-American Specialized Conference on Terrorism, held in Lima, Peru, in April 1996, had concluded with the adoption of the Declaration of Lima to Prevent, Combat and Eliminate Terrorism and the Plan of Action on Hemispheric Cooperation to Prevent, Combat and Eliminate Terrorism.

29. The Declaration of Lima and the Plan of Action recognized that terrorist acts were serious common crimes and called for the ratification and implementation of international instruments on terrorism, exchanges of information in all areas, the provision of mutual legal assistance and the strengthening of bilateral, subregional and multilateral cooperation to combat terrorism.

30. The Rio Group attached special importance to the adoption of measures to facilitate the prosecution or extradition of perpetrators of terrorist acts, while ensuring full respect for the domestic jurisdiction of States and their sovereign laws on extradition.

31. Mr. Escovar Salom (Venezuela) resumed the Chair.

32. Ms. VARGAS de LOSADA (Colombia) said that her country, which had been and continued to be a victim of terrorism, shared the views expressed by the Bolivian representative. International terrorism remained one of the international community's biggest and gravest concerns, despite the efforts made to combat and eliminate it.

33. International terrorism made no distinction between large and small States, developed and developing countries, dignitaries and ordinary citizens, in many cases using the most advanced technology to achieve its lethal aims. Nevertheless, developing countries had the greatest difficulties in dealing with the devastating consequences of terrorist acts and were thus in need of international assistance and cooperation.

34. As noted in the Secretary-General's report (A/51/336), the existing anti-terrorist conventions did not cover every type of criminal activity associated with terrorism. For that reason, her delegation supported the suggestion that States should consider whether a more global approach to counter-terrorism could be taken in addition to the sectoral efforts made so far. Paragraph 36 of the report listed some of the areas in which international treaties could be concluded to facilitate cooperation in countering terrorism within the framework of respect for the principles and norms of international law, human rights, State sovereignty, the principle of non-intervention and the rights and duties laid down in the Charter of the United Nations.

35. Mr. HOLMES (Canada) said that Canada had not been immune from international terrorism in the past year: a Canadian had been killed in a terrorist attack on tourists in Egypt, and within Canada there had been violence against religious and political institutions. Those incidents, as well as the new wave of international terrorism, had caused the Government to review its counter-terrorism measures and create new laws and new security and police services. Domestic measures were not enough, however, to combat the new technologies which provided terrorists with greater cross-border mobility. Any steps to provide protection from new dangers must be taken in concert with the international community. But arbitrary violence should not be fought with arbitrary measures - that would nourish the disaffection which enabled terrorist organizations to recruit new members. New measures to combat terrorism must also be consistent with existing international human rights standards.

36. Three aspects of the 1994 United Nations Declaration on Measures to Eliminate International Terrorism warranted particular attention. The first priority should be a review of the international legal framework against terrorism. Universal ratification, implementation and enforcement of the existing conventions was needed to send a strong, united signal to terrorists. His delegation called on States that had not yet done so to adhere to those instruments. Canada was willing to share its experience in implementing those

conventions and incorporating their provisions into domestic law, with a view to promoting universal ratification. The conventions must also be reviewed to identify omissions. For instance, the United States of America had proposed a new convention on terrorist bombings, which would be an important contribution.

37. A second area of focus was the potential abuse of the refugee system by terrorists. Member States must be vigilant that mechanisms put into place to protect individuals were not exploited by persons who had no respect for the rights of others. His delegation supported the United Kingdom initiative to rein in such abuses through a new declaration to be put before the General Assembly.

38. The third area of concern was the potential for new threats from terrorist use of materials capable of mass destruction. The international community should not lose an opportunity to prevent, rather than react to, innovations by technologically sophisticated terrorists. Canada was reviewing its domestic legislation to ensure that, for example, effective measures were in place to deny public access to materials covered by the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

39. The multifaceted character of an effective legal regime to counter terrorism required that the work of the Committee should both inform and support initiatives taken by regional organizations and in other multilateral forums. Consistency and coordination should be the watchwords of the international community in moving that agenda forward.

40. Mr. BIORN LIAN (Norway) said that the Norwegian authorities were currently examining the 25 recommendations adopted at the 1996 Ministerial Conference on Terrorism and were also studying with interest the proposal by the United Kingdom in implementation of the 1994 Declaration on Measures to Eliminate International Terrorism.

41. There being no universal definition of terrorism, Norway believed that the convening of an international conference on the subject would not be helpful in achieving common aims, and might run the risk of emphasizing existing differences. The best approach remained to promote universal adherence to existing international agreements on terrorism.

42. While his delegation welcomed the increased attention being given to the question of terrorism, it feared that parallel discussions in different forums might lead to conflicting recommendations. The Sixth Committee should be the focal point of efforts to combat international terrorism. The nearly universal participation in the Committee would ensure that all views on that difficult subject could be presented and considered.

43. Turning to the question of whether terrorism violated human rights, Norway reiterated its view that only States, not individuals or groups of individuals, could violate human rights under international law. Humanitarian law, however, had long-standing provisions for individual responsibility, and it was necessary to distinguish clearly between human rights and humanitarian law in that respect. Acts of terrorism might indeed harm individuals, but they should be

regarded as violations of national law and not of international human rights. The protection of human rights was a State responsibility and combating terrorism did not justify non-observance of human rights.

44. In 1995, a Norwegian tourist had been abducted and murdered in Kashmir. Efforts to clarify the circumstances of his death and to obtain the release of the German, British and American citizens abducted by the same terrorists would continue, along with endeavours to hold the perpetrators accountable for their actions. Violence directed at innocent people to promote political objectives could in no way be justified, and the persons responsible for such actions must be brought to justice; no State should grant safe haven to terrorists. Only through the joint and intensified efforts of the international community could the common goal of eliminating terrorism be achieved.

45. Mr. ZMEYEVSKIY (Russian Federation) said that the United Nations had a special role to play in uniting States to combat international terrorism because it had always unconditionally condemned terrorism in all its forms. The adoption by the General Assembly in 1994 of the Declaration on Measures to Eliminate International Terrorism was an important step that should be followed by concrete measures for its implementation.

46. First and foremost, the international legal basis for cooperation against terrorism must be strengthened through universal accession to the existing international conventions. His delegation welcomed the report of the Secretary-General (A/51/336) and the useful work of the Secretariat in producing a compendium of national laws and regulations regarding the prevention and suppression of international terrorism and the review of existing possibilities within the United Nations system for assisting States in organizing workshops and training courses. They would be helpful to individual Governments and provide opportunities for an exchange of experience.

47. There were hopeful signs from various regions of increased political will to eliminate terrorism and to implement the results of the major anti-terrorism forums held in recent years. Therefore, the strengthening of regional efforts should be another priority for the United Nations. The Russian Federation, noting the importance of bringing terrorists to justice, supported further steps to prevent the granting of asylum to terrorists. It believed that the draft declaration submitted by the United Kingdom, after some further work, could be adopted at the current session of the General Assembly. The Russian Federation also welcomed the United States initiative for a convention on terrorist bombings.

48. With regard to gaps in the system of international legal instruments against terrorism, his Government was proposing a convention to combat acts of nuclear terrorism, acts which could have the most serious consequences for international peace and security. The new convention would fill the gaps in the 1979 Convention on the Physical Protection of Nuclear Material. It would focus not on physical protection of such materials but on effectively countering acts of nuclear terrorism. It would extend the scope of the definition of "nuclear material" to include objects and materials for military use, but would not address nuclear non-proliferation, which was dealt with in other instruments. The new convention would also contain a clearer definition of the crime of

illegal acquisition of nuclear materials for terrorist purposes, which had not been included in the 1980 Convention. It would likewise address terrorist acts against nuclear power plants, vessels with nuclear power sources and the use of automatic nuclear devices. It would provide a clearer definition of the number of States which must establish their own jurisdiction for that category of crime. A draft convention was in the final stage of preparation and would be submitted in due course, possibly in time for consideration in 1997 and 1998.

49. Mr. HAMDAN (Lebanon) said that the Lebanese people shared a profound hatred for terrorism in all its manifestations. Lebanon had accordingly acceded to the Convention on Offences and Certain Other Acts Committed on Board Aircraft; the Convention for the Suppression of Unlawful Seizure of Aircraft; and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. For years, however, the people of Lebanon had been victims of a devastating war, as a result of the terrorist policies of Israel, which was violating Lebanon's right to self-determination, continuing to occupy parts of Lebanon following its invasions of that country in 1973 and 1982, and continuing to violate the provisions of Security Council resolutions 242 (1967), 338 (1973) and 425 (1978).

50. Since the end of the war, the Government of Lebanon had resumed the process of acceding to international instruments pertaining to terrorism. In 1994, it had acceded to both the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. It was currently completing the constitutional formalities required for accession to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and to the Convention on the Marking of Plastic Explosives for the Purpose of Detection. At the domestic level, the Penal Code had recently been amended to provide for certain crimes to be characterized as terrorism and to specify the penalties for such crimes.

51. While Lebanon stood ready to cooperate with the international community in the implementation of the instruments to which it had acceded, it insisted on its legitimate right under international law and the Charter of the United Nations to oppose the Israeli occupation of its territory. The two things should not be confused and, it would be useful to convene an international conference to establish a clear definition of terrorism which should not be subject to the political whims of certain parties. It was generally agreed that the Israeli presence in Lebanon amounted to an occupation and he had no doubt that the populations of each of the countries represented in the Sixth Committee would resist such an occupation of their own land. The violence would end only when Israel agreed to abide by the relevant resolutions of the Security Council and the General Assembly. For its part, the Government of Lebanon was committed to peace in the region after the withdrawal of Israeli forces.

52. Mr. CASSAR (Malta) said that the Government of Malta unequivocally condemned as criminal and unjustifiable all acts, methods and practices of terrorism wherever and by whomsoever committed. Terrorism was a grave violation of the purposes and principles of the United Nations, threatened international cooperation and undermined respect for human rights, fundamental freedoms and

the democratic bases of society. Terrorism was not the poor man's war and could never coincide with an ideal. Rather, it involved the murder of the innocent and cowardly acts which no civilized society could accept. Its victims were not only those who suffered loss but also the institutions of society which it undermined.

53. Malta agreed that in order to combat the growing international character of terrorism there was need for enhanced international cooperation, particularly through the exchange of information, the effective implementation of the relevant international conventions and the conclusion of reciprocal judicial assistance and extradition agreements at the bilateral, regional and multilateral levels. More effective coordination among States was also needed to combat the crimes closely connected with terrorism, including drug trafficking, illegal arms trading, money laundering and the smuggling of nuclear and other potentially deadly materials. Malta had strengthened its legislation in that field with a view to apprehending traffickers more effectively, halting the flow of drugs and confiscating the funds thus illegally acquired.

54. In addition, Malta had acceded to the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft and the Convention on the Marking of Plastic Explosives for the Purpose of Detection. It had also acceded to a number of conventions of the Council of Europe: the European Convention on the Transfer of Sentenced Persons, the European Convention on Mutual Assistance in Criminal Matters, the European Convention on the Suppression of Terrorism and the European Convention on Extradition. His Government was examining the legal provisions of the other existing treaties concerned with international terrorism with the intention of ratifying as soon as possible those to which Malta had not yet acceded.

55. A number of measures had also been taken at the domestic level, including an increased exchange of information between Maltese and other security forces, including Interpol, the establishment of a national security service to combat organized crime, espionage, terrorism and sabotage, and the harmonization of domestic anti-terrorism legislation with that of the European Union. In November 1995, the Government of Malta had hosted the second Inter-Parliamentary Conference on Security and Cooperation in the Mediterranean. The final document of that Conference had called on Mediterranean States to draft a convention on the fight against terrorism, which was a particularly serious threat in that region, and on the extradition of terrorists. Such a convention would also provide for political and economic measures against States which were directly or indirectly engaged in terrorism. His Government welcomed the document adopted at the conclusion of the 1996 Ministerial Conference on Terrorism in Paris.

56. The people of Malta were united in their abhorrence of all acts of violence and hatred, which distressed communities and destabilized nations and regions. Only through the joint efforts of the nations of the world could that cancer be extirpated.

57. Ms. HATROOS (Botswana) said that Botswana unequivocally rejected all acts of terrorism as criminal and unjustifiable. They were a source of strained relations among States, hindered international cooperation and caused unnecessary deaths and untold human suffering. The economic consequences of terrorism were particularly felt in the tourism industry which, while an important source of revenue in developing countries, was dependent on transportation by aircraft, which were often the targets of terrorists.

58. The United Nations should redouble its efforts to combat terrorism and establish international machinery to bring terrorists to justice in the shortest possible time. For their part, States must take all necessary steps to combat terrorism and refuse to harbour known terrorists. They should effectively promote and implement in good faith the provisions of the 1994 Declaration on Measures to Eliminate International Terrorism. National legislations governing the fight against terrorism should also be harmonized and consolidated in the form of an ad hoc international instrument which could be added to existing international conventions in the field.

59. Her delegation supported the view that Member States must share expertise and information about terrorists, their movements and support systems, as well as information concerning the investigation and prosecution of terrorists.

The meeting rose at 12.10 p.m.